

MINUTES

FINANCE & ECONOMIC DEVELOPMENT (TOURISM / VISITOR INDUSTRY / SMALL BUSINESS DEVELOPMENT / SPORTS & RECREATION DEVELOPMENT / OTHER ECONOMIC DEVELOPMENT AREAS) COMMITTEE

June 18, 2014

A meeting of the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee of the County of Kaua'i, State of Hawai'i, was called to order by JoAnn A. Yukimura, Vice Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, June 18, 2014, at 11:23 a.m., after which the following members answered the call of the roll:

Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Tim Bynum, Ex-Officio Member

Excused: Honorable Mason K. Chock, Sr.
Honorable Jay Furfaro, Ex-Officio Member

PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

There being no objections, the rules were suspended to take public comment.

DON HEACOCK: My testimony is on Bill No. 2546. I strongly support this Bill because I believe it is a strong tax incentive that will help promote sustainable agriculture, food security, and food self-sufficiency, and increase the magnifier affect in our local farming economy for the island of Kaua'i. First, I want to read the Federal Register's definition of sustainable agriculture, this is in the U.S. Farm Bill 1990. Congress defined "sustainable agriculture" as the integration of plants and animal production practices where waste products from one (1) crop

become nutrient inputs for the other. They are grown by local farmers for local consumption. They have site specific application that over the long run will: 1) satisfy human fiber and food needs, increase food security and self-sufficiency; 2) enhance environmental quality and natural resource base upon which agricultural economy depends; 3) make the most efficient of use of non-renewable resources and on farm resources and integrate natural biological cycles by biological constraints. They also sustain the economic viability of farm operations. They enhance the quality of life for farmers and society as a whole. That is the federal, legal definition as we said here today. Thus, this official or legal definition of sustainable agriculture has five (5) parts: emphasizing farm productivity, the production of food and fiber crops through protection and enhancement of environmental qualities, the efficient use of nonrenewable resources, economic viability and the protection of the quality of human life. Under this definition of farm that emphasizes short-term profit, it sacrifices environmental quality or quality of human life would not be sustainable in the short or long run. From the other end, pursuing environmental quality without ensuring economic viability of short-term economic returns also would be unsustainable. A farm that is very productive but uses large quantities of a non-renewable resource, such as fossil fuel, or a non-rechargeable aquifer, or one that pollutes aquifer, surface waters with toxic chemicals to achieve and maintain that productivity would not be considered sustainable in either the short or the long run. All of these things are basically listed in our State Constitution to strive to be self-sufficient and independent. Secondly, in a recent global publication entitled Agriculture at a Crossroads published by the United Nations Food and Agricultural Organization. This was an assessment of over four hundred (400) top agricultural scientists around the world.

LORI L. MARUGAME, Council Services Assistant:

Three (3) minutes.

Mr. Kagawa:
Can you sum it up?

Thank you, Mr. Heacock. Your time is up.

Mr. Heacock: You have my testimony. I am sorry I could not give you more but I have to take someone to the airport in just a few minutes.

Mr. Bynum:

Thank you very much.

Mr. Kagawa: Thank you. Anybody else want to speak under this public comment period? Please step up. Thank you. If you can please state your name and your may begin.

ADAM KELLERMAN: My name is Adam Kellerman and I have been involved in agriculture since 1975. I have a degree from the University of Hawai'i and Tropical Agriculture. I was employed by McBryde Sugar from 1979 to 1996, until they closed, and I am really concerned about this assault on agriculture that this Council is doing.

Mr. Bynum: Mr. Kagawa, can I interject just for a...

Mr. Kagawa: Yes.

Mr. Bynum: I just want to make sure that you are aware that in a minute we are going to go into Committee in which time you will have six (6) minutes and Councilmembers could...

Mr. Kellerman: I understand. I do not want six (6) minutes. I cannot stand to sit here and talk for six (6) minutes.

Mr. Bynum: Okay, I just want to...so you are aware...

Mr. Kellerman: I am just telling you that this Council has been assaulting agriculture from every angle.

Mr. Bynum: Okay, I will listen. I just want to make sure you are aware that you have an opportunity to speak longer and have...

Mr. Kellerman: Has my three (3) minutes started yet?

Mr. Kagawa: No. Can we stop and start where we broke off and just let him have his full three (3) minutes? Thank you. Okay, you may begin.

Mr. Kellerman: What is agriculture? To me agriculture is everything growing in the ground. We have sugar, we have rice, we have corn, we have soybeans, we have flowers, we have algae, we have tobacco, and we have food crops such as banana. This Bill will affect everybody because the price will go up. All of these property taxes will go up throughout every farm. Large scale agriculture is supporting the infrastructure on this island. The water and the reservoirs is all necessary twenty (20) years from now when we are all gone because of global warming there is not going to be water in this island and we need to protect the infrastructure. These large companies are protecting the infrastructure. Sugar put in millions of dollars, millions of dollars in the infrastructure of this island. Drip irrigation, agriculture is progressing. We are now looking at subsurface irrigation. Inject the tube. Leave it in there for eight (8) years but this all takes time and money. This Bill is killing agriculture and you guys have to realize that. It is starting. You guys are...GMOs, agriculture...you guys are just killing jobs and it is already starting. It is already starting. Let us get efficient. Let us get efficient with the County money. Not raise taxes. Everything...raise taxes. Do a good bill but this is not agriculture. We need to protect agriculture today. That is what we need to do and we are not doing it. We are putting obstacles, in front of obstacles, in front of obstacles and I am involved with water systems and farming. I farm two and a half (2.5) acres of rice every year for the

California Rice Research Cooperative. They are growing seed for all of the farmers in California. It is an important business. I employ ten (10) people full time. Full time, I have not laid anybody off in ten (10) years. But you guys are killing us and that is all I want to say.

Minutes of the June 4, 2014 Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee Meeting.

Upon motion duly made by Councilmember Kagawa, seconded by Councilmember Rapozo, and carried by a vote of 4:0:1 (*Committee Chair Chock was excused*), the Minutes of the June 4, 2014 Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee Meeting was approved.

The Committee proceeded on its agenda item, as follows:

Bill No. 2546 A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES [This item was Deferred to August 20, 2014.]

Mr. Hooser moved to approve Bill No. 2546, seconded by Mr. Kagawa

Ms. Yukimura: I will allow the introducer of the Bill to speak or are you speaking instead?

Mr. Hooser: No. We can let the introducer speak. I wanted to state for the record that this Bill does not raise any taxes whatsoever. This Bill merely creates another category of taxation which granted may provide the opportunity to raise taxes but does not cost any...raise any taxes at the present time and merely creates another category such as we have now. We have several tax categories. I think it is important for the public to understand that we have a hotel/resort category, we have a vacation rental category which is similar but different, we have a homestead category for people that live in their houses, we have a rental category, we have a commercial and industrial category, and so this merely creates another category of agricultural use and I just want to get that on the record.

Ms. Yukimura: Thank you. So I will have the introducer of the Bill to speak and then we will open it for public input and testimony and then I will call our Finance Director up for his input and then we will come back to Committee discussion. I would like to ask the introducer to explain the purpose of

the Bill and why he has introduced it and what you hope it will accomplish and save arguments, if you will, for later. And then we will go to public input. Mr. Bynum.

Mr. Bynum: Thank you very much, Chair. Noting that I am not currently a member of this Committee, I would like to give a brief overview of why this Bill is here and what I think its purpose and its intention is, and then I would like to read two (2) documents that are germane to this discussion and give context and understanding about why this Bill is important and why it is being introduced.

Ms. Yukimura: Okay, we are going to do a five (5) minute timing if we can subject to discretion of the Chair.

Mr. Bynum: Then I would like to set myself a timer.

Ms. Yukimura: And we have the time going also.

Mr. Bynum: We have had an agriculture dedication bill for many years that promotes agriculture and the idea of the bill and any of you can read it. It is pretty complex. It has been through a lot of iterations and it has administrative rules that are complex. And it has been around for many years and the basic law says we want to keep agriculture in production. We do not want it sitting fallow. We want it producing a product. That becomes part of our commerce and those products and that employs people and those products generate other revenue for government through GE and through other ways, specifically for State and County government. The law, you can read it for yourself. Its intention is it tells us tell us what product is being produce, is it corn, is it this, is it ranching, is it...give us the GE, tell us who has the leases and for how long. Because you are basically are saying I dedicate this to agriculture for ten (10) or twenty (20) years to this lessee to produce this product and then you do not pay market taxes. You pay taxes based on what the land produces which is much, much less than market taxes. So the practice has been for landowners forever to have this all...to have much of their land in production and that is what we all want.

Now I am going to reading these documents. This law simply says and asks the question this new use of agriculture land that is happening that does not produce a product, I do not believe was ever eligible for these tax benefits but I am not arguing that. This Bill clarifies that going forward if you are doing parent seed and research use of the land that produced no product that is sold to someone, either wholesale or retail, you are no longer eligible for this incentive, this tax incentive. And then it further says if you are using this land in this purpose consistent with us going to taxation by this use we are going to put into a different category and let a future Council decide what the appropriate rate should be, either lower or greater or whatever. But is not going to be part of the agriculture dedication system it will be in its own tax category. Now, people have asked really

good questions in the testimony which I have read from both sides and we need time to clarify that. I am going to move to these documents that I am going to read as quickly as possible. Agricultural has a long and proud tradition on Kaua'i. We honor and celebrate land in production along with the rural lifestyle and character. We support agriculture. We accept minor inconveniences and our laws protect farmers from inappropriate nuisance lawsuits by neighbors. However, we are finally getting access to information long withheld something vitally important is becoming very clear. The agricultural research practices of the seed companies on Kaua'i are far different than agricultural production practices we have traditionally chosen to support. Big changes have occurred on Kaua'i that impact our quality of life, our health, our economy, and our future. Many of these changes and forces are from outside of Kaua'i and are increasingly impacting our community and our collective future. Many residents are not aware of the important issues and the magnitude of the impacts because facts that have been kept from us are just beginning to be revealed. These facts are being revealed in no small part because of empowered grassroots community efforts, led by young *kama'aina* families. Important and very serious questions are being posed. This engagement for all its tension and all the rhetoric you have heard is positive. It gives our community the important opportunity to learn these facts, have a collective dialogue and control our own destiny. What changes am I talking about? Local *kama'aina* food producers have lost their land leases, their investments, and their businesses replaced by seed/chemical companies that now uses the same land for agriculture research that produces no product for Kaua'i or anyone. The primary use of prime agricultural land on Kaua'i has transitioned from production use of agricultural land that is part of the commerce of our island, agriculture that produces a product that is sold, to the research use of agricultural land that produces no product. The vast majority of plants grown here by the seed/chemical companies are destroyed and only their researchers use the seeds grown here. The seeds are not eaten or used by other farmers. They are experiments, not food. Because there is no production for sale from agricultural research the seed/chemical companies do here government has lost tax revenues that these lands used to generate. While state and local government lose GE and other revenue from the loss of agricultural production local taxpayers are paying higher taxes to make up the difference in effect subsidizing this transition of land use on Kaua'i. However the biggest and most important change that was hidden from us is that the relatively infrequent and low quantity, relatively low infrequent and low quantities of pesticides applied in production agriculture...

Ms. Marugame:

Five (5) minutes.

Mr. Bynum:
frequency and quantities...

...has been replaced by extremely high

Ms. Yukimura:

Excuse me.

Mr. Bynum: ...of pesticides used for research and conducted...yes.

Ms. Yukimura: Councilmember Bynum, your five (5) minutes is up. Can you summarize?

Mr. Hooser: Point of order, Chair. According to Rule No. 6, "if the maker, the sponsor of the matter before the board has up to twenty (20) minutes to speak." I would encourage you to allow that Councilmember to continue.

Ms. Yukimura: May I see? Thank you.

Mr. Rapozo: Madamee Chair, but Mr. Bynum is not a member of the Committee.

Mr. Hooser: It does not say...it says "sponsor of the matter pending."

Mr. Rapozo: Okay, it is the call of the Chair.

Ms. Yukimura: So, I will allow Mr. Bynum...

Mr. Rapozo: How many people...I am just curious how many people we have waiting to testify.

Ms. Marugame: We have five (5).

Ms. Yukimura: So I will allow the speaker to continue. Thank you.

Mr. Bynum: I am trying to read fast. I am through one (1) page of four (4) pages since I started reading so if I may continue. However, the biggest and most important change that was hidden from us is that the relatively infrequent and low quantities of pesticides applied in production agriculture have been replaced with extremely high frequency and quantities of pesticides use for research conduct on numerous plots by the seed/chemical companies. Again these research plots and larger fields of what they call "parent seed" do not produce a product that is sold to farmers or any end consumer that I am aware of. The key question I have wanted answered is this: How is pesticide use related to research practices occurring here on Kaua'i different that the pesticide use in production agriculture? We have been told for years and at recent public hearings they are just responding to pests in the field like other farmers. The real answer to me is practically inconceivable. Look at the difference. First with frequency, Kaua'i Coffee used pesticides while producing their agricultural product and to the best of

my knowledge these facts are true and they have not been disputed. They spray about eight (8) times per year. Long periods of time go by between sprayings when there is no potential for neighbors to be impacted whether they are buffer zones or drips or not. Because you spray pesticides you do not expect to have to spray them again the next day because they are going to work, right. So how often do seed/chemical companies spray while conducting agricultural research? The documents obtained through a federal court order confirm that Dupont Pioneer in Waimea has sprayed multiple fields on an average of two hundred forty (240) times per year. No, that is not a typo. It means that pesticides are being sprayed four to six (4 – 6) times per week, week in and week out throughout the year with potential exposure occurring almost every day. That is just frequency. What is more important maybe is quantity. Production agriculture in the United States typically used about one (1) pound per acre to a pound and a half of restricted use pesticides in a year. The highest use in the United States is on tobacco in Kentucky and North Carolina and it could be up to two (2) pounds or more of restricted use pesticides. Dupont Pioneer in Waimea has used over eight (8) pounds per acre per year on some fields. More than four (4) times the heaviest use in production agriculture in the country. No one will explain why if production agriculture farmers need at the most two pounds to respond to pests, why Dupont Pioneer needs to apply four (4) times as much in Waimea? Unfortunately this discussion is just the time tip of the iceberg. There are other pressing issues to discuss including our State's too little, too late response on this and other *malama aina* issues. Our natural environment, particularly the reefs, is in a stressed condition from multiple sources including pesticide runoff and soil erosion from intensive or improper use of agriculture lands. Less than twenty (20) years ago the entire coral system in the Florida Keys collapsed. This is really serious stuff. Although I am pleased that some in the State legislature seem to have discovered the importance of these issues, their baby steps take this year should not change Kaua'i County's efforts to fulfill our oath to protect the health and safety. The second document is a letter that I sent to the Mayor on May 28, 2014. Dear Mayor Carvalho in the process of investigating the agriculture dedication law, I discovered what appears to be numerous serious violations of County law in at least two (2) specific and significant areas, Real Property Tax and the grading and grubbing/environmental laws connected to the filing of conservation plans. First there appears to be a failure to properly adjust property taxes required by law when land ceased...

Ms. Yukimura:

Excuse me. Okay.

Mr. Bynum:

Do you have a point of order?

Ms. Yukimura: No, I am the Chair. But I intend to allow you to read all of this. Can you stop the clock for a second? And I just want to make clear what I think is important that these are allegations and interpretations of the law right.

Mr. Bynum: Excuse me. Read the letter and then comment please.

Ms. Yukimura: Okay.

Mr. Bynum: Let me read this letter. I am always interrupted on this floor, always and I am nine and a half (9.5) minutes in and I want to read this letter and then...

Ms. Yukimura: Alright. But I just...I do not believe you have actually got a legal determination on this.

Mr. Bynum: Excuse me.

Ms. Yukimura: But I believe that it is very good that you are putting forth what your thoughts and interpretations are.

Mr. Bynum: Can I continue?

Ms. Yukimura: Certainly you may continue.

Mr. Bynum: Dear Mayor Carvalho in the process of investigating the agriculture dedication law I discovered what appears to be numerous serious violations of County law in at least two (2) specific and significant areas, Real Property Tax and the grading and grubbing/environmental laws connected to the filing of conservation plans. First...

Ms. Yukimura: Excuse me. So I just want you to clarify this is related to your Bill?

Mr. Bynum: The first sentence says in the process of investigating the agriculture dedication law. These are related matters.

Ms. Yukimura: And the law is proposed to...

Mr. Bynum: And the law is before us at Council right now.

Ms. Yukimura: The changes proposed in the law are to address some of these things?

Mr. Bynum: Absolutely.

Ms. Yukimura: Alright. Thank you.

Mr. Bynum: Okay. Dear Mayor Carvalho in the process of investigating the agriculture dedication law I discovered what appears to be numerous serious violations of County law in at least two (2) specific and significant areas, Real Property Tax and the grading and grubbing/environmental laws connected to the filing of conservation plans. First, there appears to be a failure to properly adjust property taxes required by law when land ceased active agricultural use and/or use changed. The law clearly requires a change of use petition when use or lessees change. Administrative rules are clear and the burden is on the landowner. The law calls for repayment of back taxes. Different agricultural uses are taxed at different rates. So if we do not know about the changes we are taxing them at the wrong rates. In one (1) tax map key (TMK) in question, urban zoned land was reclassified as agriculture dedication in 2010 without any evidence that required dedication petitions were received and processed in a timely manner. On just this one (1) parcel alone the loss of County tax revenue starting in 2010 is over two hundred fifty thousand dollars (\$250,000) per year or over one million ninety six thousand dollars (\$1,096,000) from 2010 to 2014. I will go off of the topic and say that this is a dramatic number because it is an urban zoned land so the numbers are not as great as other parcels.

Ms. Yukimura: Now, Mr. Bynum. I still would like to ask you to...is this Bill actually proposing to make changes to this problem?

Mr. Bynum: I want a ruling about whether I can continue reading this letter uninterrupted.

Ms. Yukimura: Okay. Go ahead.

Mr. Hooser: I would suggest that we let Councilmember Bynum continue the letter and then discuss it afterwards. The Bill before us clearly...the second part of the Bill is requesting that the Administration to provide information on agriculture dedication and his letter directly applies to this. It points out that they have not...this information is not available and it is directly applicable to the Bill that is before us and he has been interrupted three (3) or four (4) times already and I ask that he would be allowed to finish the letter and then we can engage in discussion. It is clear to me that it is directly relevant to the Bill that is before us.

Ms. Yukimura: I will agree with that and allow Mr. Bynum to continue. I think as long as it is somehow related to the subject Bill and your point about information as to the working to the agricultural dedication law is relevant. Go ahead, Mr. Kagawa.

Mr. Kagawa: I kind of feel like it is...the allegations of wrong doing or improper use is not relevant to the Bill right now. If we want to talk about that we should have another agenda that specifically says what we are trying

to investigate. This Bill has nothing to do with specific allegations of pass so I mean let us keep on topic and it is fine if he takes twenty (20) minutes but I mean to go into an area that is not covered by this Bill is to me not proper and not properly agenda.

Ms. Yukimura: I believe both Councilmember Kagawa and Councilmember Hooser have good points. This is a judgment call. As Chair I will allow the introducer of the measure to continue for whatever time is left. Go ahead Mr. Bynum.

Mr. Bynum: Just to finish this discussion that everyone else was engaged in, I believe we are totally off our rules right now. I had the floor the rules require a point of order to interject. The Chair just interjected and started this whole dialogue. I am making now a point of order. I want a ruling from the Chair or the Committee about whether I will be able to continue to read this document uninterrupted.

Ms. Yukimura: I just gave you the ruling. Please proceed.

Mr. Bynum: On one (1) of the tax map keys in questioned, urban zoned land was reclassified as...I already read this. I had been inquiring about the appropriateness of agricultural dedication for over a year. I had a meeting with the Office of the County Attorney on August 13, 2013 thereafter I submitted my first request in writing for documents in September 13, 2013. Astonishingly, the Administration said that they were not able to provide a complete set of information about dedicated lands. I asked for information on just three (3)...so it is like hey, we are giving big tax benefits. Who has what leases on what lands and what is the fiscal impact? Cannot tell me. Months and months later still cannot tell me. How do we make informed decisions about our tax policies when we do not even know who has what lands and we are giving tax benefits? So I said just give me three (3) then. Just give me every piece of paper you have on three (3). I asked for information on just three (3) sample affected parcels. These documents were supplied and it was immediately clear that all of the documents were not provided and a second batch was found. To this day I have not been assured that all related document to these three (3) parcels have been found and provided. When I finally received the petitions requested on the three (3) parcels, "new" agricultural dedications were processed, dated and approved just days before the documents were provided to me. Yet the contracts submitted with these new leases and new uses were dated years earlier. The document provided for these new petitions include in my opinion conclusive evidence that the current evidence of the breach of the existing petitions. These new petitions should clearly not have been processed and approved and the measures under the law that these breached petitions must be initiated if they have not been already. The law says you do not follow this we have to institute some civil proceedings to deal with it. That has not happened that I know of. Related is the failure of the landowners or their lessee to

obtain any conservation plans for their new operations and uses of the land. The conservation plans I acquired that cover most of the new seed company operations on Kaua'i they are dated February 2011, years after changes in lessee and use actually occurred. This indicates that vast operations prior to that time were occurring with none of the health and safety or environmental protections required by law in place. The flagrant disregard of these fundamental health and safety and farming laws means thousands of violations of County grading and grubbing ordinance occurred. As I have always stated, these laws are designed to protect the health and safety of our residents and the environment. I understand that reports of serious environmental damage have already been investigated. These tentative conclusions come from examining the public record for just three (3) parcels in Lihue and Puhi. It appears that an investigation and audit of this conduct will reveal that this abuse has been the norm and is prevalent. Collection the set of information upon which these preliminary conclusions are based has been daunting and the delays, omissions and timing of the eventual release is troubling. The analysis has also often based on the absence of documents demonstrating compliance with the law. It is essential that there is an accurate and complete data set for each tax parcel. Our current failure as a County to keep accurate records is unacceptable. Especially when it involves money and deeds and these changes get recorded in the deed documents. Environmental laws have been ignored. Where there complaints received from the public that were not properly followed up? Are there other additional instances of runoff into streams, rivers and the ocean in the absence of approved conservation plans? Are we required to report this to other authorities? Are there potential federal violations?

Ms. Yukimura:
you know.

You have five (5) minutes more. Just to let

Mr. Bynum: Please accept this letter informing you of these very serious matters. We both took an oath to uphold the laws of the United States, the State of Hawai'i, and the County of Kaua'i, and it is our duty to investigate these matters and report them to the proper authorities. On the advice of counsel and in order to fulfill my responsibility, I am also preparing letters reporting these concerns to law enforcement at several levels. I believe additional action is required to fulfill our collective responsibilities in these matters. Finally, I believe it is important to act now to secure all potential related documents, both hard copy and electronic and I am formally requesting such action be taken immediately. I remain committed to working with you, Mayor and your Administration in resolving these issues and improving the laws in order to effectively protect the environment and the health and welfare of the community.

This is a serious letter. I have met with the Mayor. I am a policy maker. I am not an investigator. I have asked for assistance on this investigation and to look at these documents for over six (6) months from the County Attorney's Office and others and that assistance has not been forthcoming for whatever reason. I am

saying to the Administration there are laws that have very specific requirements of us to proceed when we are notified. I want to know the status of those laws and I trust that our Mayor will respond appropriately in his leadership role to take these matters seriously and so because separation of powers that is the administration. I have met with the senior people at the administration just yesterday. They understand and they are analyzing what their appropriate response should be but I understand it. I know what their appropriate response would be. A lot of it is outlined in this letter. Now the Council has additional actions that we can take if necessary. This is related to this Bill because it all started with this simple notion is this activity that I have described here something that the people of Kaua'i want to subsidize with their tax subsidies? This is not redefining agriculture. What the seed companies do here is part of agriculture commerce, no question. This redefines agriculture for tax purposes for the County of Kaua'i only and it says this use of land that uses the land purely for research and the things you grow here do not get sold to anyone, wholesale or retail, we do not want to continue to subsidize that because you are also taking that land out of the opportunity that we chose to subsidize, sustainable agriculture, food, fuel, and fiber. The same goals that Mayor's Holoholo 2020 has, the same goals that Governor has, the same goals of our State Constitution. This is totally germane. I am done. There is really good questions that are being asked about how do you define ultimate consumer and have read all of the landowners testimony. Let us begin the dialogue and let us talk.

Ms. Yukimura: Very good. Thank you, Mr. Bynum.
Councilmember Kagawa.

Mr. Kagawa: Question for the maker.

Ms. Yukimura: Sure.

Mr. Kagawa: Councilmember Bynum, did you get a County Attorney opinion prior to submitting this?

Mr. Bynum: I am really glad you asked that and the documents that I have provided the Mayor and I will provide to anyone, they are public records is that I reached out to the County Attorney months and months ago. They were supplied all of these and requested their assistance in making this Bill because of its complexity. Jennifer Winn was someone I worked with for many years. She was the tax person. She is gone from the County Attorneys' Office. So the answer is not only did I send it to them but I asked them to be engaged and involved in all of this from the beginning and in the final run for whatever reason that input came too little, too late and it was our staff person, Ashley Bunda who did the heavy lifting here and has done yeoman's work on this in spite of not getting the assistance I needed from the County Attorney. Now if we go into it further, the

County Attorney gave me things in writing I never requested but I do not want to go into that right now.

Mr. Kagawa: My question was we had Bill No. 2491 pass. We had legal concerns. Now it is Ordinance No. 990 [sic] and I was just wondering that because it is related was any thought given to getting that legal opinion first?

Mr. Bynum: I do not know how I possibly could have been more proactive about...I met with the County Attorney and Jennifer and our staff and said "look, I want your help with this. I want to author a bill that you have cleared in advance and you have all of your *mana* in on it." Jennifer Winn was given all of these documents and a request was made for them for here to analyze and see if they come to the same conclusions that I have come to. That never happened. So the answer is yes, extremely proactive I was but the response was inadequate.

Mr. Kagawa: The last question is the goal of this Bill is it to possibly enable us to more fairly collect more taxes for the agricultural?

Mr. Bynum: All of my work as Finance Chair has been about fair taxation and that is in the public record and all of the efforts that I have made. If you were here the other day, Mr. Kagawa when on a Comprehensive Economic Development Strategy (CEDS) issue we had a Special Counsel that went out and he not knowing anything about this said and had been interviewing farmers and the farmers where asked, "what can the County do for you," and their unsolicited response was these guys that are not producing a product are getting tax benefits that is not fair to me. That came totally unsolicited so yes this is about fair taxation. If you read the existing Bill it says it clearly intended that whatever was being produced was producing a product that generated GE revenue whether it was wholesale or retail. So for instance you grew flowers now so let me say that this Bill does not impact anyone who sell including the seed companies who sell a product to another farmer, another consumer anywhere in that chain. But what the seed companies do here is purely research. The seeds that they send off island go to their researchers who do further research on them. That is the intent of this Bill, if you are purely doing research, it is not something we choose to incentivize in taxes and we are going to place it in a separate tax category which is consistent with our taxation by use trend we have been doing for several years and then the Council can decide if it is successful what the proper rate should be. Someone might argue that the rates should be zero for this agricultural use. So I hope I am answering your question.

Mr. Kagawa: My follow-up to that is that if it is about fair taxation that is why even more so I would want to get the County Attorney's opinion because the Federal Government and the State Government say that Experimental Seed Farming is farming and for our County to treat them differently

to me, there is preemptive issues and that is why I wanted the County Attorney's opinion first. I do not want to see us pass another bill that may be challenged and that is my concern.

Mr. Bynum:

May I please respond to him?

Ms. Yukimura:

I think you answered him but go ahead.

Mr. Bynum: Absolutely and but I just want to clarify that this is not saying this is not farming. It is saying this is not something we traditionally have supported with tax and in clarifying our intention is not to continue to give these County tax incentives. This is really a County fiscal matter.

Ms. Yukimura: Okay, thank you. I just want to clarify that the Special Counsel you referred to from the CEDS project was actually a special consultant not an attorney. Mr. Hooser and then I want to open it up for input/testimony from the public.

Mr. Hooser: If I can address the issue that is on the table. I agree that we need to look very closely at it and need to have the County Attorney on board with this but I think it is very clear that County has a legal authority to authorize different categories of property taxes as we do with the hotel/resort, or vacation rental. Some counties do timeshares as a separate one. So clearly we have the authority to separate categories. The second part of the Bill is simply asking the Director to provide an annual report which I think we clearly have the authority to do that without question of having to ask an attorney. So the question really comes down to, in my opinion, is the definition that we are addressing and I think that is the debate is going to end up. The question how we define the activities that deserve to be in a certain category and that is the crux of the matter would be so thank you.

Ms. Yukimura: Thank you. I want to clarify here whether we did in fact get the conventional County Attorney's opinion as to legal sufficiency. I know Councilmember Bynum that you certainly brought in the County Attorney's Office on the issue of agriculture dedication and the problems of agriculture land assessment but did we or did we not get an opinion of legal sufficiency but we always do, we try to do with all of our bills?

Mr. Bynum:
of recent...

This should be a simple answer and because

Ms. Yukimura:

(Inaudible)

Mr. Bynum: No, I do not have it yet. What I have is the County Attorney failed to provide responses that were requested. There is a whole

paper trail that you can all look at related to this but they actually answered questions that I never asked, generated opinions that I never requested. They generated an opinion that was withdrawn because it was not even germane and I am not saying that this was on purpose. This has been an incredibly intense time in the County and Jennifer Winn was the go to person. Mona came in to step up and it just did not go well and you know who could answer this question...we had a meeting specifically about this with our staff and I think the best person to answer this would be our Deputy County Clerk if you want to pursue it further.

Ms. Yukimura: If there is no further discussion amongst the Councilmembers, let us proceed to public testimony. Do we have people signed up?

Ms. Marugame: Yes, we have five (5) registered speakers. First registered speaker is Stephanie Iona followed by Tom Shigemoto.

There being no objections, the rules were suspended to take public testimony.

Ms. Yukimura: Ms. Iona. Please state your name and proceed. Thank you for being here.

STEPHANIE IONA: Good afternoon, Councilmembers, Ms. Yukimura. My name is Stephanie Iona and I am basically just going to give an oral testimony on a written testimony that was provided by the Hawai'i Crop Association that should be on record. I am just going to take three (3) minutes. Hawai'i Crop Improvement Association (HCIA) requesting seed farming operations on Kaua'i is opposed to Bill No. 2546. State and County governments readily support science and technology initiatives as a way to build and grow local economies in creating living wage jobs. Bill No. 2546 in fact will do just the opposite by creating the special tax classification for subset of the agriculture industry that inherently discourages innovation. Passage of this Bill would send a negative signal to any industry that relies on innovation to create jobs and contribute to the local economy. Business sectors should not be targeted for discriminatory treatment. This particular agronomic desonation is unquestionably meant to hinder and limit a specific group of farmers and it sends a broad, negative message about Kaua'i County as a place to conduct farming operations. The rest is of record and I just want to say the proposed Ordinance it represents bad policy and we ask the County Council not to move it forward. HCIA and our member companies support all types of agriculture and want to see all sectors of agriculture thrive. Thank you for the opportunity to provide oral testimony.

Ms. Yukimura: Thank you very much. Are there any questions? Councilmember Hooser.

Mr. Hooser: Yes, Ms. Iona, you are representing...who are you representing?

Ms. Iona:
Association, Mr. Hooser.

HCIA, Hawai'i Crop Improvement

Mr. Hooser:
Crop Improvement Association.

And who are the members of the Hawai'i

Ms. Iona:

The members are the seed organizations.

Mr. Hooser:

And that is...Syngenta...

Ms. Iona:

Syngenta, Dow Agrosiences...

Mr. Hooser:

Dow Agro...

Ms. Iona:

DuPont Pioneer, BASF.

Mr. Hooser:
very much.

And BASF. Those four (4). Okay, thank you

Ms. Iona:
are ones that are predominate.

And there might be other members but those

Mr. Hooser:
Crop Improvement Association?

Okay and are you an employee of the Hawai'i

Ms. Iona:
January of this year.

I am an employee of Dow Agrosiences as of

Ms. Yukimura:

Thank you.

Mr. Hooser:

Thank you.

Ms. Yukimura:
written testimony on record or would you mind making available what you have?

Any other questions? If not, do we have their

Ms. Iona:
original copy.

I believe it was sent in. I do not have an

Ms. Yukimura:

We do have it. Okay, thank you.

Ms. Iona:
thing.

Ms. Yukimura, I just want to state one (1)

Ms. Yukimura:

Sure.

Ms. Iona: There was indication on the letter that was read with regard to conservation practices and I do want to just make mention that Dow Agrosciences along with I believe is the Wooton family won the 2013 award for conservation and I happen to take it out of my office as I was leaving. So I do want to let you know that we did win an award and we do abide by all laws and conservation laws for the State of Hawai'i. So we won this award. Yes, Mr. Bynum?

Mr. Bynum: Was Dow Agrosciences abiding by the law in 2009 and 2010 prior to...

Ms. Iona: Dow Agrosciences abides by all laws, Sir. County, State...we abide by all laws, County, State...

Mr. Bynum: So Dow Agrosciences had an approve conservation plans for their operations to 2011?

Ms. Iona: Yes, sir. As far as I know, yes sir. I was only employed as I said from January this year.

Mr. Bynum: The County has not been able to provide them to me and I just want to let you know.

Ms. Iona: Well that is between you and the County, sir. If you would have wanted one from us, I am sure we could provide it.

Mr. Bynum: So could Dow provide those conservation plans that they...

Ms. Iona: If the County requested it sir, I would be happy to do it.

Mr. Bynum: Consider it requested.

Ms. Iona: Well I...put it writing sir.

Mr. Bynum: Thank you.

Ms. Iona: Thank you.

Ms. Yukimura: Thank you, Ms. Iona. Next speaker please.

Ms. Marugame: Next speaker is Tom Shigemoto followed by Anne Punohu.

Ms. Yukimura:

It is afternoon. Good afternoon, Tom.

TOM SHIGEMOTO: I was wondering whether to say good afternoon or good morning. Good afternoon, Councilmember Yukimura, Members of the Committee. For the record my name is Tom Shigemoto. I am testifying in opposition to Bill No. 2546. The testimony I am about to deliver is in addition to the written testimony that was submitted last week and so I just wanted to make that clear for the record. Now regarding the Bill, it is not clear to me what the intent and purpose of this particular Bill is. I do understand that it is to include another tax class but the findings and purpose section does not really explain why. Is it to increase the County's tax coffers? If, as Councilmember Hooser stated, this Bill will not raise taxes then what is it for? Is there an urgency to create this new tax class? Is it subterfuge for penalizing the seed corn company or is it directly aimed at the seed corn companies? You heard testimony from Adam Kellerman, now these are the guys that will really be affected and you should really pay attention because these are the guys that till the soil and they are smaller farmers but that is the kind of unintended consequences this particular Bill can have. So that should be...his testimony should really be taken into serious consideration. The new tax classification and I quote from the Bill, "shall include properties that use their land primarily for science, research, and development of crops which do not directly gain monetary profit from the ultimate consumer." What does this mean? How does one measure what "primarily" means? For example, our Kaua'i Coffee lands, we lease out pockets of lands to seed corn companies. Is that "primarily use" because the primary use is growing coffee it is not seed corn companies. Would we be affected by this new tax classification? Furthermore, it is unclear in defining lands to be included in the new tax class, what the wording, and I again quote, "properties that do not directly gain monetary profit from the ultimate consumer needs." Now do most major agricultural crops not get exported? In the case of the seed corn, companies does the ultimate consumer not mean you, me, and the animals that some of these products feed? Is it not the purpose to raise any crop to make a profit, who does it for free? If a papaya farmer ships his fruit overseas, does this put him in this new class?

Ms. Marugame:

Three (3) minutes.

Mr. Shigemoto: I am almost done. The section goes on that as a purpose the definition of agriculture use is amended by removing horticulture as a defined use. The American Heritage Dictionary, I had to look it up, defines horticulture as "the science or art of cultivating fruit, vegetables, flowers, and plants." Why is this term being deleted as an activity when it is the essence of what agriculture is? As a representative of a major landowner who has been farming the land for over one hundred twenty (120) years, I ask you think what you are doing to agriculture. You have all preached about preserving, promoting, and perpetuating our agriculture for future generations. The State Legislature passed the Important Agriculture Lands (IAL) Law to preserve important agriculture lands which we

have complied with but will all bills like this all you are doing is penalizing large scale farming and adversely impacting the economic viability of this fragile industry. I thank you.

Ms. Yukimura: Questions? Thank you, Tom. Go ahead.

Mr. Hooser: Yes, Mr. Shigemoto. How are you?

Mr. Shigemoto: I am fine. Thank you.

Mr. Hooser: Since you called me out and you mentioned my name on my comments I just want to be clear that what I said was that this Bill does not raise taxes but I said all be it gives the County the option to raise taxes in the future if it wanted to. So I just wanted to be clear on that. The Bill itself does not cause anyone's taxes to go up.

Mr. Shigemoto: I stand corrected. Thank you.

Mr. Hooser: And secondly, I believe it is my understanding that the County currently charges different rates for different kinds of farming. So for ranching, tree farming, and diversified agriculture all get treated differently as it stands today. And so this would not be a variation from that mindset. I believe the County and many communities recognize that different activities have different impacts and the taxation policy often times is directed at those impacts so we want to encourage tree farming we give them a bigger break. We want to take into consideration that ranching has certain impacts and we charge them a certain thing. And so it is not outside the past practice of the County on how we do our taxation. I just wanted to point that out and see if you had any thoughts on that.

Mr. Shigemoto: No, understand I do not know exactly what the different rates are for the different types of activities but I have always had concerns about how lands are being taxed. For example, if a land is fallow it is taxed lower than perhaps...no? Well I do not know but I thought it was taxed lower than a piece of property that was in agricultural production. It is not?

Mr. Bynum: It is exactly opposite.

Mr. Shigemoto: Okay, I stand corrected. Then I do not really fully understand that but I do understand the differences or the different types of agricultural taxes that you assess.

Mr. Hooser: And the reasons for the questions is just to bring the dialogue to educate people in the community, in the public, people that are here that it is a complex subject and we do treat different people differently some times for different reasons.

Mr. Shigemoto: And I thank you for that and again I am here to testify to protect our interests as well.

Mr. Hooser: I understand. Thank you.

Ms. Yukimura: Any other questions? Councilmember Bynum.

Mr. Bynum: Tom, thank you so much for being here. This is the beginning of a dialogue and I would fully expect that you would be here to protect your interest and I am very interested in answering your questions so let me to one by one. What we have had traditionally, you pay market taxes, right? Agriculture, the market taxes are not that great. On a very large parcel, some of them I have looked at, thirty to forty thousand dollars (\$30,000 to \$40,000) a year. Put it in ranching, it is like one thousand dollars (\$1,000). Put it into diversified...so we have had two (2) categories traditionally, ranching and everything else. The landowners, you know want everything in production because it is tax benefits to them. And they have the same values and goals we do, right? They want the land in production. They want it producing a product. So this use now, what product does it produce? Is it diversified agriculture or is it ranching? That is one (1) issue because it is neither. Diversified agriculture sells a product to somebody, this does not. So this Bill just simply says...it only impacts...now you are raising...the papaya farmers they are not impacted. Flower growers, not impacted. Fiber growers, not impacted. Anybody that grows anything that gets used...so the ultimate consumer is the difficult definition. I know that. That is why we do public process. Now, I just said I did not get the help from the County Attorney I requested. We have pretty sharp staff here that consulted other people and I feel that the Bill as it is currently written is sufficient but I am open to amendment. That is what the democratic process is about. You have made really good points...is this all okay Councilmember. I am answering his question.

Ms. Yukimura: Well we do not normally have full on discussions in question and answer from testimony. I agree with both Councilmember Hooser and Bynum that some of this discussion is good but I do not want to let it keep going so I guess I am just asking for...because we can also talk to the Finance Director about the appraisal process but it is good information. So if you could just try to summarize.

Mr. Bynum: And you said what do if we have this portion and I know agricultural parcels...I am aware the Dow is growing some hybrid seed that they actually sell to farmers. They told me that. They will not tell me how much or where but they are trying to obfuscate this basic concept that the majority of what they grow is not sold to anyone. That is the distinction I am trying to make here. We can through amendments work out allowing crop rotation and those but we have not been given the basic information about who is doing what where and so when we know that we will be able to answer questions more but nobody is trying to hurt agriculture or anybody. You know as the landowner the lessee pays the taxes. If we remove them from agriculture dedication their taxes will go back to market. So on one (1) of the parcels I looked at it would go from about two thousand dollars (\$2,000) to thirty thousand dollars (\$30,000) on two hundred (200) acres. You will pass that on to the seed companies. An additional thirty thousand dollars (\$30,000) in taxes is not going to destroy their business here.

Ms. Yukimura: Okay, I am going to have to please call it to a close now and are there any further questions of Mr. Shigemoto? I think what you have heard though is that amendments or proposed amendments are welcomed so any of that which people want to proposed can be submitted to us.

Mr. Shigemoto: Can I just say one (1) more thing?

Ms. Yukimura: Yes.

Mr. Shigemoto: We have about three thousand to thirty-five hundred (3,000 – 3,500) acres currently in coffee. I believe Dow Agronomics leases about three thousand (3,000) acres from Robinsons. Imagine if...you may not think it will kill the seed corn companies but imagine the three thousand (3,000) acres of our land, three thousand (3,000) acres of Gay & Robinson's lands, and even perhaps Kundsens's lands or Grove Farm's lands are out of production because these seed corn companies choose not to farm. What will happen? They sit fallow, what kind of replacement crops would feasibly be grown if this classification was created?

Ms. Yukimura: Okay, thank you. So Tom, I have a question out of that. It sounds like from your testimony that the three thousand to thirty-five thousand (3,000 – 35,000) acres that are in coffee would not be included in this category that is being proposed.

Mr. Shigemoto: I do not know because the language says "primarily" so if it is not then great. It would not affect McBryde Sugar.

Ms. Yukimura: So the definition of "primarily" maybe is what is required either in the law itself or in the rules and regulations.

Mr. Shigemoto: Yes.

Ms. Yukimura:
law itself.

But you probably feel better if it were in the

Mr. Shigemoto:
situation like that what would happen?

All I was asking is for clarification on the

Ms. Yukimura:
Bynum to propose some amendments or languages later.

Okay. Well I will allow Councilmember

Mr. Bynum:

Just two (2) questions.

Ms. Yukimura:

You have a question?

Mr. Bynum:

He posed a question about...

Ms. Yukimura:
keep going, please. So if you have a question please ask it if not I would like to get on to other speakers.

No. I do not want that kind of dialogue to

Mr. Bynum:
thought, I lose it. Tom you asked really good questions, let us meet offline and talk about it. Maybe you can help me with an amendment that will address your concerns.

It is just me...when you interrupt my train of

Ms. Yukimura:

Thank you.

Mr. Bynum:

Can you meet with me offline?

Ms. Yukimura:
from the introducer of the Bill that is not your intention to include Kaua'i Coffee, where coffee is grown lands in the category, is that correct.

And I think we could ask for a clarification

Mr. Bynum:

It is not impacted in anyway and the...

Ms. Yukimura:

Alright.

Mr. Bynum:
about and I have had it in my mind three (3) times, key word...horticulture, I am sorry, horticulture. That word...that was a recommendation from Finance and the County Attorney to remove that word...he is saying it was not a recommendation from Finance so I will modify that because he is probably correct.

I am almost done. You asked a question

Ms. Yukimura:

Okay, I think...

Mr. Bynum: ...but that word horticulture has such a broad definition that it caused issues in other laws and so taking that out is to bring clarity not to cause any difficulties. But that is what the democratic process is about.

Ms. Yukimura: Thank you.

Mr. Bynum: We now have your input so...and when we get information from the companies about what they are doing...

Mr. Rapozo: Madamee Chair, point of order.

Ms. Yukimura: Yes.

Mr. Bynum: ...we can go forward.

Mr. Rapozo: I have been quiet long enough.

Ms. Yukimura: Thank you.

Mr. Rapozo: This is simply not fair. I have a lot of discussion too and I am waiting for the appropriate time. But this is getting a little old and...

Ms. Yukimura: Thank you.

Mr. Rapozo: Thank you.

Ms. Yukimura: And so we will go on to the next speaker, please.

Mr. Shigemoto: Thank you.

Ms. Marugame: Next speaker, Anne Punohu followed by Felica Cowden.

ANNE PUNOHU: Aloha. My name is Anne Punohu. I literally have a whole lot written on this Bill so I have a lot of questions. I have a lot of suggestions for clarifications. I have a lot of suggestions for maybe making it a little more clear, cleaning it up, and I also want to say that I certainly do not intend on testifying in favor of a Bill that would hurt our farmers and that would hurt our people. It was a matter of my understanding the Bill, because I feel that some of the Bill does need clarification. I am just going to read a little bit of my notes. I am in favor of a creation of a new taxation category. Currently the agronomic designation would affect operations that are subsidized already, some by taxpayer

money. The County is losing tax revenues that we could be using for our island. I used to work for C. Brewer. I use to work for a place called Kilauea Agronomics and so I think I am well qualified to testify on a word called agronomics. Where I worked we did do seed production. We did do seed research, however it was not Genetically Modified Organisms (GMO). It was regular selective breeding and natural hybridization. We were very famous for a particular variety of guava there called the gushi sweet which was produced through University of Hawai'i with Mr. Gushiken and it was produced and created right there on the property. One of the things that I want to address on this is on bringing in the heirloom seed question and natural selective breeding and natural hybridization versus (inaudible) technology. I think that it is not addressed adequately in here because it says anything that seed production or anything it does seed la la la la... I want to protect heirloom seed production and I want to protect some organic seed production (inaudible). My other question is I would like to see the definition of primarily clarified and my suggestion is just to make a number such as fifty-one percent (51%) or fifty-two percent (52%) or seventy-five percent (75%). That would clarify, to me, that would make it a primary number as far as I am concern. My other concern is the enforcement and I will get to that in a second. Unintended consequences, that is important to me. Another on was as far as taxation and how can we make another designation. You have a hotel would not have the same category as a commercial fishing it is that kind of a thing. I did have some specific section questions though. On the research and development crops should be classified as agronomics.

Ms. Marugame:

Three (3) minutes.

Ms. Punohu:

What about natural selective breeding and heirloom seeds, that was my other question. I am trying to go really fast. I can hear those buzzers. My other big buzz word here was intends. It says intends to obtain a monetary profit for listing activities. To me "intends" is one of those words like shall and may. I had a suggestion for that as far as an amendment for the use intends section or wording I would suggest a time period to prove intention by having an applicant state a time for production to commence therefore being held legal binding to that time frame so that this wording cannot allow someone to hold the land by just saying intended to but not be held to a date for starting production and do not get the tax break incentive without doing production. Let me see, did I have anything else? No, but not written down but I just want to clarify again that I would never support a bill that would hurt farming production on Kaua'i. I see it as a matter of equity. Some people will see it as an imbalance still but I see it as giving it its own category and its own tax category kind of solidifies the fact that they are here and this is the kind of agricultural production they are doing and it is in a whole category on itself. Which we do know it is new technology, it is different technology and it is a different application of the process completely and I honestly do not see it as a bad thing. I see it as a good thing and really on a long term actually protective for the industry if they really think about it. *Mahalo.*

Ms. Yukimura: Thank you. Questions? I have one (1) question, Anne.

Ms. Punohu: Yes.

Ms. Yukimura: Where is the word intend?

Ms. Punohu: It is in two (2) places. The first place is on page 4. The top of page 4, first paragraph. That is one place that it is at and I think there was another place too. That is the only one I have underlined right now.

Ms. Yukimura: Thank you very much.

Ms. Punohu: *Mahalo.*

Ms. Yukimura: *Mahalo.* Next speaker please and then we will take a lunch break.

Ms. Marugame: Next speaker is Felicia Cowden followed by Leland Nishek.

FELICIA COWDEN: *Aloha*, I am Felicia Cowden and I am going to really speak in broad brush strokes and I will be brief. I think it is really important that we are evaluating land tax structure because we need to be highly conscious of the end effect of what happens. What I have noticed in the whole years of living here is how we handle vacant land. Being taxed at the highest and best use often is the very thing that forces unwanted development whether it is agriculture or otherwise. So that is some element, I know it is not what is under consideration right now but I just want to highlight that pressures the landowner. Another thing in here when it is looking at selling that presumes...I believe when I am looking at a presume subsistence agriculture is homestead land but we do not want to penalize subsistence agriculture because that is a very foundational element of sustainability. I put a couple of notes here. When we have the production of end use agriculture what would be used as something like food or building materials that supply Kaua'i first, to me that should be encouraged over other practices that exploit the land and opportunities and exploitation had both the good and negative connotation. It does create jobs, I am recognizing that but when we have agriculture processes that deplete or contaminate the soil which requires no bonding, right? There is no bonding so it leaves the citizens and the County to have to clean the land after the companies leave. We see that heavily on the east side where people are scratching out organic farms in very big deal is getting the pineapple residue out of there. It becomes very costly and so in many ways organic farmers have the opposite of the benefit that is being extended to the large ones. So to me agriculture taxes it does belong in separated categories but I

think there is value in taxing that reward or punish the care of the soil. In our new Kilauea agriculture subdivision we are looking at that, what the end result is with the soil and so to me what is most important with the taxes is that we are fair and that we are looking at what is our end goal because ultimately taxes have two (2) purposes: 1) they increase revenue but the other thing is that they discourage that which they tax and they encourage that which they give tax credits. The form of agriculture that we give we need to be conscious of how we tax and we have gotten good examples of ranching and otherwise.

Ms. Marugame: Three (3) minutes.

Ms. Cowden: So to me agronomics as a title is worth considering.

Ms. Yukimura: Thank you, Felicia. Any questions? If not, thank you very much. We are at 12:30 p.m., Leland, do you want to make a real quick three (3) minute and with the okay of the Council.

Mr. Rapozo: How many more do we have.

Ms. Yukimura: How many more do we have?

Ms. Marugame: That is the last registered speaker.

Ms. Yukimura: So we have to come back. We will have to come back. Can you come back after lunch or do you want to do it...you want to do it now? Okay. I am going to allow the next speaker and then we will go to lunch. I am sorry we cannot take everyone. Please.

LELAND NISHEK: Good afternoon, Council. I am Leland Nishek, Kaua'i Nursery and Landscaping. I am opposed to this Bill in its present form. A copy of a letter submitted by Kaua'i Nursery and Landscaping should be at the Council office. This Bill, there was some discussion about horticulture being deleted. I am not sure. Horticulture, point "H" and point "I", cultivating trees on land. They are being deleted, they are bracketed and being deleted in the present Bill.

Ms. Yukimura: Cultivating is still in but horticulture is deleted.

Mr. Nishek: Well it is bracketed. Bracketed items are deleted.

Ms. Yukimura: No just the "I"...

Mr. Nishek: You have "G", "H", and "I" bracketed.

Ms. Yukimura: It is only the letters. The text of the provisions are still there but horticulture is deleted.

Mr. Nishek: Okay. I think I would like to some language on how the interpretation is made on these various topics. How it is going to be applied would be one (1) of my concerns. Then you had botanical gardens also as being deleted and page 5, item 1, the term agriculture use shall not mean uses primarily as yard space, landscape, open area, botanical gardens. I think that could be misinterpreted very easily so I would like to see some explanation on that. That is all I have for now. Thank you.

Ms. Yukimura: Any questions of Mr. Nieshek? Thank you, very much.

Mr. Bynum: I...

Ms. Yukimura: Sorry.

Mr. Bynum: Thank you, Leland for being here. First of all horticulture was a recommendation of the County Attorney to remove it. It was removed in other bills because of its broad definition was causing problems. So it was not my proposal but this is what we do. We dialogue and make sure we understand all of the implications of every word being added or removed. That I wanted to say and then everyone has talked about the work primarily. Primarily is existing language in this Bill. It is not new language and so the questions about defining it are good ones but I just want to point out it is not new language. These other provisions are just renumbered. They are still in there. So these are good questions and that is what we will follow-up on and I wanted to start with that.

Mr. Nishek: Thank you.

Ms. Yukimura: Mr. Hooser, you have a question?

Mr. Hooser: Yes just a brief question. Did you say that you thought botanical gardens was being taken out?

Mr. Nishek: Yes.

Mr. Hooser: That is the existing language also in the existing Ordinance. The existing law says botanical gardens are not considered agricultural use. It is not a change that we are making. It is existing law.

Mr. Nishek: It is existing law?

Mr. Hooser: Yes. Just so you know. Just to be clear.

Mr. Nishek: So you are telling me that National Tropical Botanical Garden is not considered agriculture?

Mr. Hooser: Under existing law it does not look like it is.

Ms. Yukimura: No it is not qualified for agriculture dedication but they may get a dedication as a non-profit.

Mr. Nishek: But I would like to see who makes that determination and what language they are using to make that determination.

Ms. Yukimura: Well the first level is the Ordinance, which is the Council makes the determination. The second level is the regulations which are made by the Real Property Tax Division in Finance. But we can work on some of those concerns.

Mr. Nishek: I think it needs more discussion.

Ms. Yukimura: Yes.

Mr. Hooser: Yes. My point is that we are not proposing to change the law with regard to botanical gardens. That all I wanted to make clear. That is not being proposed here. That is existing law. Thank you.

Mr. Nishek: Thank you.

Ms. Yukimura: Thank you very much. Question?

Mr. Bynum: Leland, I just had to say while I really appreciate you being here and your testimony, I just received your written testimony and the first sentence...it is written to me. "It has come to our attention that you are manipulating the word of Chapter 5A of the Kaua'i County Code to suit your vendetta against the GMO industry on Kaua'i." I am really disappointed that you would see it that way.

Ms. Yukimura: I am sorry. This is out of order because we are not having arguments about pros and cons. Each person is allowed to give their position.

Mr. Bynum: I have a question if I could. If I was not being...the only way you can interject, JoAnn, is with a point of order even if you are the Chair, I believe and I just...I had a question but I am not going to ask it now.

Ms. Yukimura: Alright, thank you. Okay, we have come to a lunch break. We will reconvene at 1:40 p.m. Thank you.

There being no objections, the Committee recessed at 12:36 p.m.

The meeting was called back to order at 1:42 p.m., and proceeded as follows:

Ms. Yukimura: Our Committee meeting will come back to order and we will continue with public testimony. Do you want to read the next speaker please?

Ms. Marugame: Mike Dyer followed by Fern Rosenstiel.

Ms. Yukimura: I do not see Mr. Dyer in the audience so we will go ahead Ms. Rosenstiel, Ms. Fern and yes, if you can find Mike for us. Thank you.

FERN ROSENSTIEL: *Aloha.*

Ms. Yukimura: *Aloha.* Please state your name.

Ms. Rosenstiel: Yes, my name is Fern Rosenstiel for the record. Thank you, County Council. Councilmember Bynum, thank you for your research efforts and crafting this Bill. I support the efforts here to clarify about tax benefits and given our current financial situation and budgeting restraints I feel this is incredibly important that it is addressed. I think we should be working to make things easier for small scale farmers and help sustainable agriculture as per Don Heacock's definition which is outlined by Congress. Thank you, Councilmember Hooser for clarifying that this is in no way a tax increase but that this is a change to those who get tax benefits and at what rate. I am concerned about the reaction from this farmer that spoke earlier. I would like to understand more about what his business does and how it may be impacted. I do think primarily would appear to mean more than fifty percent (50%). For anyone that requires clarity I think it might be beneficial to actually address that if it need be. I would also like to encourage a further conversation about the definition of horticulture and a little more clarity as to why the County recommended it was removed and how the removal does impact the Bill and other stakeholders. It seems to me that the experimental nature of what is going on here with this why definition of agriculture does need more categories and clarity. I believe we need more incentives and support for agriculture. Maybe even more tax cuts where appropriate and I think more importantly than ever right now we need to be focusing on supporting farming and agriculture to make it profitable for more people to get involved and take up business opportunities in agriculture but I do find it appalling that huge corporation that are experimenting here with pesticides and GE technologies would be getting the same tax benefits as small scale farmers or possibly even more tax benefits. It is my opinion that this is totally backwards

and if anything they should be being taxed at a high rate so that our County and State can adequately monitor and investigate their practices, experimental pesticide use permits, and their practices here which we are obviously struggling to do and to fund. It is my opinion that the issue associated with the possible tax evasion and fraud as mentioned by Councilmember Bynum in this introduction and letter to the Mayor is of a criminal nature and should be investigated by the police or possibly higher levels of investigative services. As we move forward we should definitely be looking at ways to curb the excessive tax breaks and subsidies that our tax money and government is giving to multibillion dollar chemical corporations which profit billions every year. I believe this Bill is a good opportunity to start making corrections to this issue given the controversy that their experimental use permits and research has caused in our community I find it utterly appalling that these corporations are on top of this actually getting tax subsidies from the very community who is concerned. This is somewhat a slap in the face to all tax payers and Kaua'i. So thank you for trying to correct the situation and for addressing the uneven nature by which tax subsidies and breaks are being given to multinational corporations while farmers and land prices increase and our food production agriculture is further squeezed out by corporations utilizing land for research and experimentation of highly controversial technologies and chemicals. I appreciate your time.

Ms. Yukimura: Thank you very much, Fern. Any questions?
If not thank you very much and we will take Mr. Dyer now.

Ms. Marugame: Mike Dyer followed by Dustin Barca.

MIKE DYER: Sorry I am late.

Ms. Yukimura: No problem.

Mr. Dyer: My name is Mike Dyer. On the two (2) elements in this proposed Bill, first, on the taxation side. Over the years I have spent a lot of time working and thinking about property taxation and things like that. One (1) of the things that I supported when I was on the taskforce was trying to reduce the number of classifications that we had. It seems to me now and then that creating a whole bunch of categories is in this particular case cutting another category out of agriculture. It is a sort of a slippery slope that obviously we are already on. We already have nine or ten (9 or 10) categories now. I am sure sometime a few months down the road someone will come in with a new category such as green houses. Maybe we should have green houses in another because they are obviously really different than dirt farmers and so forth. This particular case, you have testimony from me saying that it seems to me fairly obvious effort to cut one specific small segment of agriculture out from the rest of agriculture maybe as Mr. Hooser said to lower their taxes but my feeling is that probably is not the case. It is probably an effort to try to find ways to get more money out of these companies

for whatever reason. For those of us in the community who are lobbying for more and more categories and to get more and more money out of other people to pay for the "cost of the County" that we generate I am sorry that is not what I call fair taxation. The people that generate the cost sadly are the residents themselves and we already give them plenty of breaks. I am one (1) of them but I am also a former farm owner. I went through the hell of stopping farming and going from the nice low agriculture rate to being hit with a sixteen thousand dollar (\$16,000) tax bill the year after I got out of farming. I had to scramble and spend another thirty to forty thousand dollars (\$30,000 - \$40,000) cleaning up my farm and fencing it to get it into dedication so that I could stop the bleeding but there is no mercy for how you transition from one thing to the other on this island. I am dedication right now...transition to the other part of this Bill...so now we are going to look at dedications. You are going to look at my dedication. I think I am clean but you guys have so many rules and make things so complicated I do not know. I talked to my pasture operator yesterday and he said "oh yeah, we just pulled the yearlings out of there yesterday" so if you send a guy out there you would not see any cows in my pasture right now. We are getting ready to put them back in but I am violation today and if I am found to be in criminal violation as somebody just said of this law you are going to roll me back. Now I am six (6) years into my ten (10) year dedication and you are going to want to collect about eighty thousand dollars (\$80,000) from me if this is fair I do not know...

Ms. Marugame:

Three (3) minutes.

Ms. Yukimura:

Mike, three (3) minutes but you have three (3) minutes more. Just to let you know.

Mr. Dyer:

That is about all I have to say really. I think that this Bill to try to cut out the seed companies is a mistake. They should be treated like other farmers. If as Mr. Bynum says so passionately they are violating laws with respect to pesticide use and things like that then that is how you should approach it. Not by trying to find a way to get them into a separate category so that you can tax them more. As far as dedication goes, it should be...if you just did what Felicia said and that is if you were fairer to vacant land people would not have to run out and try to find ways to dedicate which almost always ends up being in pasture because it is extremely hard to farm and make money on this island. I tried it for twenty-two (22) years. We probably broke even over that period of time and we were the best diversified papaya farm that this island has ever seen, I believe. Some farmer may challenge me on that but we were extremely successful and we still went out of business because we lost our water. You did not change your rules for us when we lost our water and had to go out of business. We went out of business and you immediately hit us with a big tax bill. To me this is not fair. There has to be a better way to do this.

Ms. Yukimura:
Mr. Bynum, question?

Thank you. Any questions of Mr. Dyer?

Mr. Bynum: Mike, thank you very much for being here and as always appreciate the dialogue. You and I have been talking about taxes for many years so you do recall that I supported those proposals to simplify the tax code and to do what you just suggested.

Mr. Dyer: Yes, I do.

Mr. Bynum: So I appreciate that you pointing out that creating new categories and taxation by use is just the way this has gone. I might agree with you but you have to work within a system but you have, correct?

Mr. Dyer: We also have to criticize when we think it is incorrect.

Mr. Bynum: Right and that is great. You and I agreed many times and disagreed many times but it has been a respectful dialogue. I want to ask you specifically though about your experience. You were in agriculture dedication and how did the County find out that you farm ceased, that you stopped?

Mr. Dyer: Back in those days we did not need dedication. I am not sure that the rules are the same now. You would have to ask Steve but when we were farming, before...in those days you just got it without it having to be dedicated. They had a value for a certain type of crop land and I think it was...

Mr. Bynum: It was open ended?

Mr. Dyer: Yes and it was amended. So then it just went to market value straight. If you were not farming it was all market value and that is what it is. We were not dedicated when we were farming so the farming did not end at the end of dedication it just ended. We were getting a three thousand dollar (\$3,000) and acre evaluation more or less when we were in papayas and that was fine. And we paid a much bigger bill then when we do now but I am in pasture of course. We are talking about losing revenue, you force people into pasture and they end up paying fifty dollars (\$50) a year instead of one or two thousand dollars (\$1,000 or \$2,000) which would be reasonable for maybe a big piece of agricultural unused land like ours.

Mr. Bynum: You are correctly identifying that basically we have two (2) categories right now, pasture and everything else, right?

Mr. Dyer: Well that is one...

Mr. Bynum: And you were in everything else and you went to pasture.

Mr. Dyer: Yes and...

Mr. Bynum: And then you mentioned that you needed to fence?

Mr. Dyer: Yes.

Mr. Bynum: So you went through a legal process that said okay our farm has ended. You went to market taxes and then those taxes were higher and you said I want to put this land back in to some kind of agriculture production for I am sure several reasons but one (1) to lower the taxes, right?

Mr. Dyer: That is the only reason. I would have been perfectly happy to mow it and leave it as open space. I am not a big fan of cows personally, but you forced me into pasture.

Mr. Bynum: And again those are issues that we can discuss but that is the current system. My question is though you needed to fence it...that is not in the law anywhere, those are administrative rules. So the County has had a really outstanding individual for years trying to interpret these rules that they are given and he helped define what the standards are for an orchard, for...that would become the Finance Department and it is all in the administrative rules, right. That is the way the law works. Like primary use is coming up today, that is existing language. You have the opportunity to define that further in administrative rules, you are aware of that, right?

Mr. Dyer: Yes, that is true. The big crime is just leaving your land vacant from what I understand.

Mr. Bynum: And I understand that and this is...I think we should talk about that but as I said earlier the landowners always want to put the land into some use and ranching is the default mode as was your experience. But you informed the County, you got the dedication, you are required to do certain things, right?

Mr. Dyer: Yes.

Mr. Bynum: And that lowered your taxes considerably from market?

Mr. Dyer: Yes.

Mr. Bynum: Thank you. You know I asked for all of the records related to your farm because I asked for all of them. But I have not received them yet. When I receive them I think I will discovery that you followed the law because you are a very law abiding person and so you have been very helpful with this so far. Please stay engaged in this dialogue because we can address some of these issues and you know I am willing to go there. I have in the past. Thank you.

Ms. Yukimura: Thank you. Any other questions? I have one (1), Mr. Dyer. I have one (1) Mike, if I may. Thank you for being here today. I think some of the underlining concerns for the Bill are that the lease rents and the prices that are given to landowner for use of their land for these larger seed corn companies are much, much higher than regular agricultural small plot farming like thirty (30), fifty (50) acres diversified crops. I am not familiar enough with the evaluation process but my question is if you feel like we should not add more categories can we get a more equitable assessment of agriculture lands using the existing system that would better reflect the value of those agriculture lands based on lease rents or some other category?

Mr. Dyer: Well I am sure you can. We use market value if it is not being farmed and that, I think Felicia it and I think it is correct that thing is what drives land into development obviously or into sale. It is really hard to hold on to land now because of your tax law primarily but you can find formulas. As I say in the old days if you were farming there was a certain category for...they had a table with what the evaluations for those lands and I assume they were somewhat based on what a landowner would charge for lease rate if somebody was going to do a certain type of operation. Extremely low for pasture, if they are going to lease to someone for papayas or something like that a different one, if it was for hard wood fruit trees or something in the long term it would be something different all together but those are all economic factors. You can use those.

Ms. Yukimura: So the existing system...we may be able to achieve our goals through the existing system with more careful scrutiny of what those values actually are.

Mr. Dyer: Yes but just remember there are two things going on here. One is the evaluation, the assessment but what we are talking about here really is the tax rate. If you cut out a new category the opportunity is to get away from the evaluation and go to attack the rate and if it happened to be, I do not know if there is anybody want to get rid of the seed companies the way to do it would be to make their tax rate so high that it would not be economic.

Ms. Yukimura: Well I mean you are suggesting a motive that may not be everyone's motive so if the motive is to...

Mr. Dyer: But if there is one (1) person that feels that way they might think that would be the way to go.

Ms. Yukimura: But it takes the County Council and the Mayor to set new tax rates also, so it is not a one (1) person thing.

Mr. Dyer: Yes, I know.

Ms. Yukimura: The other factor here is agriculture dedication. Besides category of agriculture and classes based on crop there is this agriculture dedication so one (1) of the questions is, that I think is being raised here is who should get agriculture dedication. What privileges does it confer and on whom or what kind of agricultural operations do we want to confer those privileges?

Mr. Dyer: As long as you define pasture as one of the agricultural uses a lot of big land that is not suitable for agriculture for a number of reasons whether it be terrain or access to water, whatever they will end up in pasture because you have to not go to market value.

Ms. Yukimura: And it is interesting what we call market value because if you required every house to be a farm dwelling on agriculture land rather than a country estate, the market value of agriculture land would be different, would it not?

Mr. Dyer: Oh, if you said if everybody had to farm if they were going to live on a piece of agricultural land?

Ms. Yukimura: Yes.

Mr. Dyer: Yes it would be different. That would drive the prices way down but it would drive your tax base way down as well I would think.

Ms. Yukimura: Yes but it would define market value of agriculture land in a very different way.

Mr. Dyer: Well two (2) things, we are talking about agriculture land that is really farm land or land that is classified in that catch all category called agriculture.

Ms. Yukimura: That is correct too. Alright, well there are a lot of complications here but thank you. You have been...I know you have been a long time participant in the discussion about taxes on land and I have appreciated both your insights and your actions on it. Thank you. Councilmember Hooser has a question.

Mr. Hooser: Since you are such a great resource, I appreciate you taking the time in being here today. I know you have spent years working on this very issue in terms of revising the tax structure. That is correct, right? You were part of the task force as a volunteer and I certainly appreciate that. You mentioned motivation. Do you think a legitimate motivation is looking at the classes, classification or the groups impacts on the community? For example hotels, hotels in the residence has a big impact on our community and the guest do not pay property taxes and we do not have Transient Accommodation Tax (TAT) now, we do not have an opportunity to pay for those services like parks, roads, water and so I think similarly one could argue that certain agricultural operations have larger impact than others. Small scale mom and pop operations doing organic of some sort, would use less pesticide, less machinery, more control versus a large agribusiness who uses more intense farming. And so there may be a motivation. I certainly think it is justified and would like to hear your opinion, raising or charging different rates for businesses that have different impacts.

Mr. Dyer: What are the County services that the agribusiness has used different from what the organic farm uses? I mean the County services are fire and police and various things like that. In terms of policing pesticides and things like that, as I understand, it as a State function primarily although it sounds like the County wants to get into that business. Obviously there is a difference between a hotel and a little organic farm. There is also a difference between a little organic farm and big corporate farm but the corporate farm is going to be bigger taxes anyway by virtue of the size I would think but there is just as much of a chance that they are going to have to call on the fire department, the organic farm as the seed company and maybe the seed company has the in house resources to take care a lot of things that the County takes care of. I know a lot of nasty things happen up in our area on the north shore in the farming area that relate to the employees and various things that can happen up there and...you are right, Gary, I am sure there is a difference but I do not know how you would qualify it.

Mr. Hooser: Okay and you mentioned your taxes went to sixteen thousand dollars (\$16,000) a year or something like that before you dedicated and just looking at a property tax summary sheet of Pioneer and it is four thousand (4,000) acres assessed market value of twelve million dollars (\$12,000,000) and they are paying four thousand dollars (\$4,000) a year in taxes. And this is a multimillion dollar, if not more, intensive operation using a lot of land and a lot of water, resources, pesticide, run off, resources, and impacts and they are paying four thousand one hundred eighty dollars (\$4,180) and it seems like there is something wrong with the picture in my opinion and so I think it is a good discussion that we are having and we can look into how to...basically to me it is equity.

Mr. Dyer: It is and I, as I said before dedication particularly if you are dedicating a pasture which is default the go to position, I mean these guys are spending a ton of money in the community and doing a lot of stuff in addition to paying medium taxes. My thirteen (13) acres went to sixteen thousand dollars (\$16,000) not because of anything I was doing. It was because it was of the market value of pieces near me. I had no defense against that except to dedicate which then made my taxes go to fifty dollars (\$50) a year. There may be something wrong in there but it was an obvious choice for me. I had to put a fence around there and stop the bleeding right away.

Mr. Hooser: Thank you.

Ms. Yukimura: Thank you very much. Next speaker please.

Ms. Marugame: Last speaker, Dustin Barca.

DUSTIN BARCA: *Aloha.*

Ms. Yukimura: *Aloha.*

Mr. Barca: Dustin Barca. Thank you guys for having us and putting this issue on the table. I think it is a serious issue, very serious issue. At a time when our County savings has gone who knows where we are kind of in a time where we need to start taking advantage of the loopholes that are being taken advantage by these large landowners. We need to start closing up the holes that are preventing us from making ends meet and keep us from going more into debt because that is the direction we are headed right now. By making large land lessees accountable is a start to running a professional business of County. We cannot keep accommodating wealthy entities while our local taxpaying citizens pay the price. I think it is time to start patching the holes and regaining the trust and respect of the people of Kaua'i because I think we are at a place where that respect and trust is just diminishing daily. I think issues like this are very important to start looking into and possibly patching those holes and getting out of debt is a big issue I think we are facing on our island so *mahalo* you guys.

Ms. Yukimura: Thank you. Questions of Mr. Barca?

Mr. Barca: Any questions?

Ms. Yukimura: Thank you.

Mr. Barca: *Mahalo.*

Ms. Yukimura: Next speaker.

Ms. Marugame:

No other registered speakers.

Ms. Yukimura:

Alright we are through the list. Elijah. Welcome, Elijah. You would state your name.

ELIJAH FRANK:

My name is Elijah Frank. Thank you all for having us here today. I came today because for me taxes and our County budget is a very serious issue as I am sure you are very much aware of and for me it is much more important than just this one (1) particular Bill. I am going to ask each and every one of you at the table here today to really take a strong look at this issue of taxation on Kaua'i and what we have to do moving forward over the next few years. For me the bigger picture with agriculture is what is our vision as a County for what agriculture is going to look like in ten (10), twenty (20), thirty (30) years down the line? I know as a County we have a vision of possibility of more food security to where we are growing more of our own food locally and we are supporting local farmers and we have the Kaua'i Made and Kaua'i Grown labels and I see that happening and it is great but what is lacking to me is how much land is needed to produce, let us say we have a goal like our energy goal of fifty percent (50%). How much agriculture land is needed for local small farmers to grow fifty percent (50%) of our produce or to raise fifty percent (50%) of our beef? However much that is we need to plan on how to incentivize our large landowners to try to create that reality. Working together, working with the landowners, working with the community. If our goal is food security how do we achieve that together, all of us? That to me is the most important issue, us working together to achieve our food security goals, enhancing the local grown, feeding each other, helping our ranchers, helping our farmers, and doing it in a way that is positive. But if our lands are all leased up and our water is all taken away we cannot do that so it is very important to look now to set aside those lands, set aside those waters, and how can we set a proper tax structure to make that happen? Thank you all very much. *Mahalo*.

Ms. Yukimura:

Thank you. Any questions? If not is there is anyone else who wishes to speak? Jeri.

JERI DIPIETRO:

Aloha Council Committee. My name is Jeri DiPietro. I am in support of Bill No. 2546 seeking fair taxation on real property. Since the inception of the biotech experimentation we have needed a separate designation to separately address growing food versus tinkering with transgenics and herbicide tolerant commodity crops. The chemical and biotech research was not fully understood when they started to lease out our lands. I think that the subsidies and the tax breaks for agriculture and the technology tax breaks, they were meant for a different purpose than what we are seeing here. The agricultural tax breaks were meant to help jump start and encourage the nurturing of our local food market. Biotech is different. The chemical corn is so different that is patented. It is patented down to the unique seed. If diversified agriculture is the goal it is the resident's will that is included in our 2020 plan we need a separate category. We

need to make up this revenue. The County is missing out on a lot of loss revenue. Imagine if we do not collect adequate property taxes and the County is left with the remediation cost for these tens of thousands of acres. We need to redefine the property tax purpose and it is about equity. These landowners are collecting higher rent on the chemical corn experimentation fields. It is not the same as the rent they would collect from food farmers and it is right for the County to benefit from that too. Since our State is not tangent to other states, there is good and bad to that. I definitely love the benefits of being an island state but I think we sometimes do not realize that other states do not accommodate this type of experimental toxins without creating some kind of an offset. So for these people to be not paying their proper share of land use it is hurting the County. We have not even mapped where these fields are yet fully so I mean we are on the right page. This is an idea for this property tax designation is a long time coming. This land needs to be taxed at a different rate. It certainly is a different use. Thank you very much.

Ms. Yukimura: Thank you. Are there any questions? Jeri, I have a question. What if there were a way without this separate classification to achieve your same goal? Which would be just better assessment and maybe a reevaluation of whether agriculture dedication is appropriate.

Ms. DiPietro: I think that is a possible...I am not sure what is the best way to get there but I think the facts are the land has one (1) zoning use that is covering food and chemical experimentation. To at least designate that chemical experimentation is separate whether it is occurring on agriculture land or if you wanted to reclassify that as experimentation zoning but there needs to be a separation, a designation because we do want to encourage food farmers. We need a lot more land to go into food farming. They should not have to incur a high property tax rate while we are trying to encourage that. We have a long way to go but I think, sure it just...the real outcome is that this is a different use, they are making a much different profit, and the County is incurring a lot of liability. We have not even talked about the birds and the aquatic life and everything else that suffers from the use on this land. It certainly is in a different type of use.

Ms. Yukimura: Okay, thank you very much. Is there anyone else who wishes to speak? Mr. Kubo.

CLAYTON KUBO: I guess in my opinion...

Ms. Yukimura: Can you state your name first?

Mr. Kubo: Clayton Kubo, Waimea, Kaua'i.

Ms. Yukimura: Thank you.

Mr. Kubo: I guess in my opinion that if you doing research that I cannot eat it, my son cannot eat it then they should be charged a different rate. No human consumption, I guess the tag says on the bag when it is being exported out of Kaua'i. That is what I see but we will see how you guys play this game out. This is definitely a game that I can see already. You guys are going to be probably chopping up this Bill like the other bill and then is it really going to help? Like this Bill is to help the County of Kaua'i. I really hope that this Bill is going to help the County of Kaua'i meaning we the people of the County. Instead of just continue bickering and grumbling and saying "no you have to prove, no I have to prove." What is the sense in that? Just do the right thing. That is all this is. Just do the right thing. And, Mr. Bynum, thank you for presenting this Bill. It reveal a lot of mishaps that has been happening over the years. Such as Dow grubbed Kaumakani and the major runoff went into the ocean. That is when they found fifty thousand (50,000) or eighty thousand (80,000) sea urchins. I do not know what year that was but I am just going to guess 2009, is my guess. Any questions?

Ms. Yukimura: Any questions? Thank you, Clayton.

Mr. Kubo: *Mahalo.*

Ms. Yukimura: Is there anyone else who wishes to speak? Alright, if not, I am going to ask with the rules still suspended ask our Finance Director, Steve Hunt to come forward. If you would state your name.

STEVEN A. HUNT, Director of Finance: Yes, Steve Hunt, Director of Finance, County of Kaua'i.

Ms. Yukimura: Thank you, Steve for being here. You are presently Finance Director but prior to this was the head of Real Property Tax, right?

Mr. Hunt: The Tax Manager, right.

Ms. Yukimura: So you bring a wealth of experience. Let us see...do you have some comments that you wish to give or do you want us to just ask questions?

Mr. Hunt: I think I should probably make some comments just on the Bill as it exists in its current form.

Ms. Yukimura: Please proceed then and then we will ask questions.

Mr. Hunt: Okay, thank you. In reading through the draft Bill that is before you, I do have some concerns, primarily with the removal of the word horticulture. As Councilmember Bynum stated earlier it was a recommendation from the Attorneys who reviewed this, not from Finance. This is something we looked at when we had some issues with botanical gardens. Rather than remove the word horticulture we excluded botanical gardens from being part of eligible properties for dedication. The issue that sort of wraps itself around horticulture is it is not just the science and research of plants but it is going to also impact the eligibility of dedications for such properties that do cut flowers, ornamentals, nurseries, and some other research like Mr. Kellerman was doing with rice. Those would be the casualties if horticulture were removed from in this Bill, and removed from properties that are eligible from dedication. Another issue that I had in here actually to do with in the classification section it states "parcels which are used for no other purpose than science research and development of crop shall be classified as agronomics," the key emphasis being on no other purpose. There are going to be properties that have multiple uses on them. You could have a single parcel with a portion leased for science research and development and a portion leased for organics or commercial or other types. This says that no other has to be classified as agronomics but if it is a split use we could have some discrepancies on how we would classify those properties. Another one that kind of jumped out is in the defining of what should be considered "agricultural use", again, it was self admitted by Councilmember Bynum, what is the ultimate consumer and does consumer mean to consume in terms of eating or consume in terms of purchasing or a combination of the both? I guess that was one of the concerns is a little bit better definition on what that actually constitutes. The creation of a ninth class, agronomics from reading the Bill it sounds like this would preclude properties that are doing solely research oriented activities from being dedicated from agriculture but they still could be considered an agriculture use. In other words they would go to market value because they are not considered agriculture use for the term of valuation but they do not necessarily need to have their own classification in terms of tax rate unless you wanted the tools to do both bring them up to a market value and have a different rate that may be higher from agriculture but to me it still is an agriculture activity it just may not be not one that you are looking to promote. Again, breaking the valuation from the classification it may not need another class.

Some concerns I guess I have in implementation of the Bill, the Bill requires the Director to submit annual reports but does not specify a date. I would assume that maybe with certification that is the time those would come in but again it is not specific. The data required is not necessarily collected in our Intrusion Detection Systems (IDS) software. Some of the items that are being asked for in that report would actually have to be researched input which would include some staff time. Again, I would want some clarification on that and I can go into what those are. If in fact those fields are going to be needed to be added to the existing software to generate that report there is likely to be some cost in terms of

modifications for the software and I do not see any funding source in here either for staff time to implement nor for changes in software to accommodate that so I think funding should probably be a part of this as well if we go down that path. Specifically, if I counted there were six (6) items that were requested for data. Name of the landowner and again if we are looking at a summary because many times you can have twenty to thirty (20 - 30) landowners for parcels that are dedicated and many times they are family and they may have portions of interest in the property so are you looking for a complete listing of all of the owners or is one or two (1 or 2) of the major owners sufficient enough for that? The tax map keys (TMKs) of the dedicated area, again some of the TMKs may be leased in portion thereof so we could have multiple TMKs repeating themselves so I am not sure if you are looking for the TMK per se or the dedicated area by different type, I guess. The third item is the period of the dedication. Typically the periods of dedication are either ten or twenty (10 or 20) years so I am not again clear whether this is asking to say this is a ten (10) year or twenty (20) year dedication or is this asking for a date. This is the date that this started dedication this is the end date that this is going to end. So I am not sure again on the period of dedication whether you are looking for the year it became dedicated and the year it is anticipated to expire or you just want to know whether it is just a ten or twenty (10 or 20) year dedication. Size of the dedicated area, again they are not always the same as the parcel size. You do have some areas that are unusable, *pali* area, wasteland, areas where the soil is too thin to farm but they are part of the overall dedication. We have different degrees of what is actually being farmed and what is dedicated so again I would want a little more clarity on what you are actually asking for in this. The description of the agriculture use, again we somewhat generically classify into two (2), pasture and diversified or crop. So I am not again specific if that is how we collect the data. There are hard copy files that may specifically go into whether it is papayas or avocados or corn or whatever that individual crop may be but for the assessment side, because again from the real property assessment side all we are concerned about is that is it diversified or pasture, what is the rate that it gets assessed and that is how we monitor data. So if you are asking for more specific crop data that would take time again and staff to potentially input and collect that data. Taking it from hard copy into a digital because these reports, I would assume would be generated by the system at some point because it is too manual to do this every year from hard copy.

The taxes resulting from the dedication compared with their market value, I am assuming market value taxes. Again for the most part this is a general easy assignment but there are going to be properties like the urban property where the underlining zoning actually determine the applicable rate so without the dedication which is considered an agriculture use when we get into the actual individual underlining portions of that parcel you could have some that is a multi family, you could have some that is industrial or commercial and there are different values and different rates that are applicable and our system is currently not geared up to generate that kind of report because we are looking at primarily what is the net

taxable, what is the assessed value. Your taxes are based on that not what are the hypothetical taxes that we are looking at. So again it could probably be done but we are going to need resources again to generate that kind of information if that is what you are looking for. Those are the major concerns that I have.

Ms. Yukimura: Okay. Thank you very much. Questions?
Councilmember Rapozo and then Bynum.

Mr. Rapozo: Thank you, Madame Chair. Thank you, Steve. My first question is really for you to clarify how the property taxes on Kaua'i are done. It is ad valorem.

Mr. Hunt: Correct.

Mr. Rapozo: Can you explain what that is because I understand...I mean I hear a lot of the testimony and I have read a lot of the E-mails where they relate the tax to the impact. Can you let the public know what we are...how we are required to assess taxes.

Mr. Hunt: Yes. We are required to assess taxes and it is ad valorem, based on value. The value is determined based on what we call highest and best use. So with many of these agriculture properties, primarily the smaller ones that we are looking at, smaller being twenty to thirty (20 – 30) acres some of those are actually highest and best use is residential development. That is why people who are buying these large tracks of land that do not want to farm are developing them and they are looking at what they can sell their individual CPRs for. What sort of reasonable rate of return would be for that investment and that is what is driving the pricing of what people are paying for these agriculture lands. When we do the dedication we breakaway from ad valorem and we get into what is the agriculture value of that property and that we have had studies done, I cannot site when the most recent one was but it basically looks at carrying capacity of the land. If you provide for the current wages, what the current cost of utilities are to bring utilities to the property, what they anticipate an average crop truck or ranching head of cattle or whatever livestock would be would produce. When you sort of backwards into it and allowing for a certain amount of risk and rate of return what would be left to pay for the land. And you capitalize that at a market rate and say okay if they are able to pay so much per year in lease rent and you capitalize that that would become the agriculture value of that property.

Mr. Rapozo: Right, and I think that is important because a lot of people think that because they possibly, whether it is resort, whether it is agriculture, whether it is residential or commercial that we have the authority and the ability to tax based on the impact. That is not true.

Mr. Hunt: Correct.

Mr. Rapozo: That is illegal if we did that.

Mr. Hunt: Yes. Well I do not know how you are defining impact but in terms of what are the resources that are required, what is this property cost the County we do not do that. It is ad valorem.

Mr. Rapozo: And ad valorem is based on the value of the property, the market value of the property.

Mr. Hunt: Correct. And your control, both the Mayor and more appropriate you at the time is the rate setting. That is how you can control what people pay.

Mr. Rapozo: And we can dictate what we want but the assessments are just ad valorem.

Mr. Hunt: Market.

Mr. Rapozo: The second question is, and I am not sure if you are prepared to answer this but and I am taking this from Mr. Bynum's letter that he read today. There was a reference to a parcel and I do not know what the TMK is, I just saw the letter today, it was the first time that I saw it. That in fact between 2010 and 2014 this one (1) TMK apparently underpaid taxes of one point zero nine six million dollars (\$1,096,000). Are you familiar with that?

Mr. Hunt: I am doing some research on that particular parcel now. I can tell you that there was a correspondence that went between our agriculture inspector, Damion Ventura and the Planning Director at the time, Ian Costa and then back through Bryan Mamacalay to the Grove Farm owners or representatives including David Hinazumi and Arrly Kaneshiro and then to Ian Jung to give an opinion and it had to do with the up zoning of that property that came before Council and part of that up zoning was a requirement, a condition number 20 in that Ordinance that required the property to remain agriculture use. We looked at whether there would be a requirement to do a use permit from Planning Department to allow agriculture back on properties that were now determined urban and the end result was essentially was it is a requirement, it was an Ordinance by Council that required it to be and therefore it was redundant. They did not need the use permit, it became eligible for dedication for agriculture.

Mr. Rapozo: Based on the Ordinance?

Mr. Hunt: Yes. The interpretation.

Mr. Rapozo:
million dollars (\$1,096,000)?

So we did not lose one point zero nine six

Mr. Hunt: Well we lowered the taxes based that it became an agriculture dedicated property.

Mr. Rapozo: But that was done through the Ordinance that this Council passed?

Mr. Hunt: The Ordinance opened up the window for them to come back without having to meet other requirements of the dedication.

Mr. Rapozo: Okay and I guess we can have that discussion. I guess what I will do is...I am not sure if you saw the letter. I guess we will send it over and maybe you can have an opportunity to respond.

Mr. Hunt: I will be responding to that letter.

Mr. Rapozo: Okay, thank you.

Ms. Yukimura: Thank you. Councilmember Bynum and then Councilmember Hooser.

Mr. Bynum: You just mentioned document, a germane document related to this agriculture dedication that I have never seen and I have been begging for these documents for months and months and months and I have even put them into now a legal UIPA request. Why was I not provided this document?

Mr. Hunt: This document was protected by client privilege with the attorneys.

Mr. Bynum: Okay, let me just start at the beginning. Thank you for your very detailed response to the Bill and until the end here we were sticking with the Bill which is what I was admonished to do earlier. The concerns regarding horticulture, I did correct. It was not...that was the botanical gardens. I got those confused but it was a recommendation from County Attorney's Office and so the only reason that is in there is because they recommended it and my memory of that was that it is a term that is so broad that it covers everything that it can be used as a catch all. It is unnecessary because all of the things you mentioned like cut flowers and ornamentals are covered elsewhere in this law.

Mr. Hunt: They are not.

Mr. Bynum: Is the opinion you made that leaving horticulture, and that is what this process is for, you put a bill forward and now you get the comment, you said that "leaving the word horticulture would impact cut flowers and ornamentals," is that your opinion or is that a County Attorney opinion?

Mr. Hunt: No, that would be my opinion.

Mr. Bynum: Okay, I just want to clarify that. So obviously we are going to turn that into a question for the County Attorney. The definition of ultimate consumer is obviously a thing that we need to further dialogue and again without getting a response to numerous questions, without getting a complete set of data our staff, myself had to do the best we could without support that we requested. Everything you are discussing about more of these technical implementation questions are things that we obviously work out easily. They are meaningful, it is kind of early in the dialogue to get into those technical questions and I understand all of them because you and I have been talking about this stuff for many, many months but I wrote giant letters administrative rules, anybody who is out there look for the administrative rules, they are a public document, they are very extensive on this law. Is it not correct, Steve, that the administrative rules can resolve a lot of those technical questions? Like things that I mentioned earlier about fencing required, or how many trees constitute an orchard or what is primarily yard use versus...those are all questions that have been answered previously through administrative rules, correct?

Mr. Hunt: I would say some of them have. I would not say all. Dates typically are in Ordinance.

Mr. Bynum: That is the kind of guidance you seek from the County Attorney. What you need to put in the Ordinance because my position publicly for years is do not put anything in the law, do not get too detailed in the law, do not do more detail than it was required because then you take away flexibility from the administrators and there is a public process for administrative rules, correct?

Mr. Hunt: Yes.

Mr. Bynum: So a lot of the concerns that are being expressed here other than this Bill have previously been and could be revisited through administrative rules, correct?

Mr. Hunt: Yes and I say that with reservation because I am not sure to the extent that this is looking at retroactive issues.

Mr. Bynum: And then back to the... you know I did not intend to get to this level of detail today but I am prepared to and I probably bring

back here, where I show the documents that I am referencing. I show them and tell the whole story but that is not the Bill. Councilmember Rapozo asked questions related to that so I just want to...I am sorry I lost my train of thought so I am going to let it go.

Ms. Yukimura: We can come back to you.

Mr. Bynum: Yes, thank you.

Ms. Yukimura: Councilmember Hooser and then
Councilmember Kagawa.

Mr. Hooser: The parcel of land that is worth the one million dollars (\$1,000,000) in back taxes may or may not have been lost...you mentioned that you cannot show us the documents because it is client/attorney privilege?

Mr. Hunt: Yes, I needed to check with the author of the opinion.

Mr. Hooser: And who is the author of the opinion?

Mr. Hunt: Ian Jung.

Mr. Hooser: It is the County's opinion? Is that what you are saying?

Mr. Hunt: I am being potentially advised here.

Mr. Hooser: Is there someone behind me making signs to you?

Mr. Hunt: Yes.

Mr. Hooser: And who might that be?

Mr. Hunt: That would be First Deputy County Attorney Manua Kea Trask.

Mr. Hooser: Okay, so Mauna Kea Trask is instructing you not to answer the question?

Mr. Hunt: Because it is not an agenda item.

Mr. Hooser: Back to where we was. So he was not signaling you not to answer me. Is that correct?

Mr. Hunt: Yes.

Mr. Hooser: So there is a letter out there that says that there is a County Ordinance that says...

Mr. Hunt: There actually is an E-mail chain that talks specifically about...it is a request coming initially from Damien Ventura asking about the eligibility of a property for dedication that goes to Ian Costa.

Mr. Hooser: And that is just this month, or years ago?

Mr. Hunt: 2009.

Mr. Hooser: 2009. But you said the Council passed an Ordinance requiring it to be in agriculture?

Mr. Hunt: Correct.

Mr. Hooser: Can we get a copy of that Ordinance now?

Mr. Hunt: It is PM...I will give you the Ordinance number. PM-326-96.

Mr. Hooser: I am assuming staff got that and will print out the Ordinance or something for us. Because I am aware that this information has been requested for a long, long time and it is all of a sudden here. Back to the Bill for a second. I agree there are some work that needs to be done on the definitions and that type of thing. One (1) idea that I had that I might propose at some point in the future was that the definition be limited to research and crops that are federally regulated and that leaves everything else out. I mean everything, orchids, whatever and it limits it to products and organisms that are not approved for release into the environment or for consumption. They are federally regulated. Would that definition be concise enough for you, do you believe?

Mr. Hunt: What would be the notification to the assessors that they are federally regulated?

Mr. Hooser: We can work on that. It is a good question. I would suggest putting the burden on the person receiving the tax benefit. They would provide an affidavit saying this is what we are doing and then we base our taxes on that. Right now we base our taxes on them telling us what they are growing anyway, right? I mean is that how we do it, right?

Mr. Hunt: Yes. We get a farm plan that basically tells us what they are growing and where they are growing.

Mr. Hooser: So it would be just like that in the farm plan we would just ask them to indicate what is regulated and what is not regulated. So that would be a suggestion that we could talk about as we move forward. There was some discussion on the ad valorem requirement if you would. In the case of any property we assess it based on the highest and best use.

Mr. Hunt: Correct.

Mr. Hooser: But we set whatever tax rates we want to set as a Council body, right? So we can set higher tax rates on whatever category we choose is appropriate and in the best interest of the public and so if we choose to set those rates on impacts that is our prerogative, I believe. Would you agree?

Mr. Hunt: I would concur with that statement.

Mr. Hooser: Great. Thank you and right now the parcel that I was talking about earlier and also ad valorem...it is the value. Bigger houses pay more taxes, more expensive homes pay more taxes so a farming operation making millions of dollars, one would think, would pay more taxes than smaller operations in terms of the value but right now the assessment is based on the same so the multinational corporation making hundreds of millions of dollars pays the same tax rate as the small mom and pop farm. Is that correct?

Mr. Hunt: The assessments are the same in terms of the approach.

Mr. Hooser: The tax rate, if they are both dedicated the tax rate is also the same.

Mr. Hunt: They both get the evaluation the same, they both get the tax rate the same under the dedication.

Mr. Hooser: So they are treated exactly the same and my point is that I believe is much of our country is based on progressive tax policy where there are higher values and those organizations that are making more money pay a higher share of the burden then the lower cost and so I think there is a perfectly valid public policy purpose for this. Back to the Bill, the section of the list of items that are being requested. I would appreciate your help with this because you obviously have some good ideas. As we move forward with looking at how to improve this I will speak for myself only as Councilmember Bynum is the author of the Bill but I think basically looking for an inventory of dedicated lands. We want

some confidence how much land is dedicated, what it is being used for, where it is located and so the parsing of words could be whatever the tax in my opinion the tax office feel is useful. Right now it is my understanding that we do not know how much land is being dedicated or where it is located or what it is being used for. Is that an accurate characterization of the knowledge possessed by the Department of Taxation?

Mr. Hunt: No that is not an accurate characterization. What would be an accurate characterization would be that the data specifically asked for does not exist because some of it involves mapping in layers that do not exist on a GIS map. Some of the data that exists includes hard copy files that are not easily retrievable by a run of the system. Some of the data that is specific to the nature of the crop does not exist in an electronic form but rather in a manual hard copy form so to say that the data does not exist or we cannot determine how many parcels are dedicated or what the area of the dedication would be inaccurate but building a historic database to say what was it previously, what parcels did they come from yes that would be a very challenging assignment to pull together that data.

Mr. Hooser: So if I asked for a list of agriculture properties on Kaua'i that were dedicated to agriculture you could give me the TMKs and all of that information.

Mr. Hunt: Yes, there would probably be some clean up if we just wanted a TMK listing that probably be done.

Mr. Hooser: And would that have the attached agriculture dedication documents attached to them?

Mr. Hunt: No it would not. None of that is electronic.

Mr. Hooser: Is it all available?

Mr. Hunt: In files and including in storage.

Mr. Hooser: So we had an issue with the Planning Department here a year ago, we talked about vacation rental issues and at the end of the day there was three or four hundred (300 or 400) files of parcels that we were receiving as if they were permitted and many of those files, if not most, have been complete. Would you say that most of these files are complete or incomplete?

Mr. Hunt: I would say most are complete and there are about seventeen or eighteen hundred (1,700 or 1,800) at any given year. Some come in as new, some fall off as fulfilling their dedication, may or may not rededicate, so...again it is at what moving point in time you are looking at but...

Mr. Hooser: Okay, thank you.

Ms. Yukimura: Councilmember Kagawa.

Mr. Kagawa: Thank you, Steve. Just to follow-up on Councilmember Rapozo's...so do we know how many acres are zoned in agriculture?

Mr. Hunt: I do not know off the top of my head but it is something that could be determined.

Mr. Kagawa: So every agriculture parcel has a portion that is dedicated?

Mr. Hunt: No. There are some agriculture parcels that are not dedicated at all and they pay market taxes because they do not want to incur the onerous roll back if they dedicate and decide to develop later so parcel that are typically going to be developed do not dedicate.

Mr. Kagawa: So a lot of the gentlemen estates like in Kilauea they are not...

Mr. Hunt: Dedicated?

Mr. Kagawa: Yes.

Mr. Hunt: Yes. A lot of those are not dedicated. In fact the bulk of the value savings is on vacant land. Once a home is built on the property that consumes a majority of the market value so the differential between yard space and a dedicated land area is very minimal so putting all of the hooks and strings in about what the penalties would be for breach is not worth it.

Mr. Kagawa: For a lot of the agriculture homeowners who do not perform any agriculture, are they paying their adequate share?

Mr. Hunt: In fact most of them are actually classified as residential now with the tax on use changes. Many of the properties that had been in agriculture but were primarily homesteads or second homes that were rentals that are on agriculture property have been moved to either homestead or residential classes now.

Mr. Kagawa: And that is to take advantage of the big difference in the homestead rate.

Mr. Hunt: And agriculture was always eligible for homestead if that was their primary use on the property was a homestead.

Mr. Kagawa: Okay because I know in the past that one of the big gripes was that people were not farming, basically taking advantage of having a homestead type use in an agriculture zoned area so that is no longer the case?

Mr. Hunt: In fact if I may expand on that a little bit. Ordinance Nos. 741 and 742 in which I helped co-author and these are agriculture Ordinances. I believe 1998 or 1999 was the timeframe and keep in mind there are actually three (3) sets of ongoing dedications. We have prior to that 1998-1999 ordinance there were a set of rules and an ordinance in place at that time so anyone who dedicated for twenty (20) years still subject to those rules not the new rules. Then there were the ones that occurred 1998-1999 that I help author and then there was the one, I think the major revision was in 2002 was the next one. So there are three (3) sets that the agriculture inspector has to implement. Three (3) sets of different rules because there are three (3) dedicated periods and these are essentially commitments or contracts. The emphasis that was really the bulk of the Ordinance Nos. 741, 742 and was getting rid of the deferred program which was the role of did not highlight as long as you do an agriculture you get agriculture value. You do not have to dedicate and that was the land banking. Everyone would just...I am doing agriculture, put a horse or cow on the property. It is agriculture and we get the big break. So that was the crackdown. Prior to that there was no Schedule "F", there was not asking for the GE, there was none of that, because the emphasis on compliance was trying to get...in fact this was from my involvement with Roy Oyama, Jerry Ornalles, Lincoln Ching, I believe Bill Spitz, I am probably missing somebody but we had a committee that was formed and we kind of looked at it and there emphasis was this is not real farming, we want these guys out, we do not want them associated and getting the agriculture rates. That was the emphasis so this whole income process did not even come into being and it is really a compliance issue that we addressed for the gentlemen farmers that were not farming. When I start seeing some questions about they are not paying GE therefore they are not eligible, that is not true. It has always been physical evidence. If you are planting, and this has never been about the big commercial agriculture operations the physical evidence has always been there. The harder part is when you come on a gentlemen farm and you see nothing how do you prove that they are really farming and that is where all of these things...these are request for us to challenge whether they are actually in agriculture use not a precursor to say if you do not have a GE, if you do not have a Schedule "F" you are not eligible for dedication. I just want to make that clear because I have heard some dialogue different from that but being the co-author that was the intent of cracking down on income had to do with the gentlemen farmers.

Mr. Kagawa:

Okay, thank you.

Ms. Yukimura:

Thank you. Councilmember Hooser.

Mr. Hooser: I was looking at the Ordinance and just so the public knows, this is an Ordinance that basically changed...gave them development rights. Is that correct? To change the zoning from agriculture to urban, right?

Mr. Hunt: Yes.

Mr. Hooser: So that is the intent. But it says prior to development is what says in the Ordinance, land shall be kept in agriculture. So while you are waiting to build houses keep it in agriculture. Is that correct?

Mr. Hunt: Yes, I believe it is condition 20 says "prior to development land shall be kept in agriculture or diversified agriculture as defined in section 8-1.5 of the Kaua'i County Code 1987 or otherwise maintained in well kept condition."

Mr. Hooser: Right. So that when they decide that they want to start building houses or develop it next year they can just start developing that is my understanding. It does not say shall be dedicated. Dedication is for a specific period of time.

Mr. Hunt: Correct.

Mr. Hooser: So it is what, ten or twenty (10 or 20) years? So was there an agriculture dedication?

Mr. Hunt: There was a dedication in 2010.

Mr. Hooser: Do you have a copy of that?

Mr. Hunt: I am not prepared to do that. I am here to speak on Bill No. 2546. And I will address the letter that was written to the Mayor.

Mr. Hooser: Okay. So this says basically...you do not have to keep it dedicated. It just says it has to be in agriculture.

Mr. Hunt: It has to be in agriculture and that was the issue that the agriculture inspector, the agriculture specialist was grappling with is that it is now urban how does it go back into agriculture even though they have been maintaining it? I believe there was some...the lower valley had always maintained pasture lands and for parcels over one hundred (100) acres I think the requirement was only fifty percent (50%) of the area be in dedication at the time and then there is ten percent (10%) per year that the property could come into additional agriculture uses so that was sort of the discussion, the dialogue, the

E-mail between Planning and Real Property and ultimately getting guidance from the County Attorney's Office.

Mr. Hooser: Perhaps we will talk about this later in more detail but I think Councilmember...thank you.

Ms. Yukimura: Other questions? Councilmember Bynum.

Mr. Bynum: Thank you for supplying this. This says, "or otherwise maintain in well kept conditions," so it does not just say in agriculture and it has nothing to do with dedication. Yes?

Mr. Hunt: It has to do with whether a...

Mr. Bynum: Okay well we will move on. In 2010 that changed to agriculture dedication, where was the petition that was received to change it in 2010?

Mr. Hunt: Again I will address that in a letter. This is not today's agenda item.

Mr. Bynum: I will answer that. And I asked for staff to bring it up. I did not think we were going to get into this level of detail today but I will just ask this question...did you process an agriculture dedication in 2014 for that land? In 2013, did you process an agriculture dedication?

Ms. Yukimura: Okay...

Mr. Hunt: I cannot speak to that and I am not sure. There is also a provision that deals with name changes. Whether there was a name change there is a required repetition so I am not going to speak to that without looking at it.

Ms. Yukimura: Councilmember Bynum, I am sorry this is not regarding the Bill. This is not related to the Bill.

Mr. Bynum: Okay, I will do whatever you say but I brought this up because Councilmember Rapozo asked and he said I will answer questions about this letter but I will move on to something else if that is your judgment.

Ms. Yukimura: Please.

Mr. Rapozo: Madamee Chair, may I just real quick? I brought it up because Mr. Bynum brought it up.

Mr. Bynum: Right and that is okay.

Mr. Rapozo: He read the letter. He is making it seem like I opened the door. I did not open the door.

Ms. Yukimura: Okay I would like to focus on the Bill please. Any question from any Councilmembers?

Mr. Bynum: I have other questions.

Ms. Yukimura: Yes, go ahead.

Mr. Bynum: This one you are objecting to, correct?

Ms. Yukimura: Yes and you get to continue your line of questioning regarding the Bill and we can come back to you if you wish.

Mr. Bynum: If I did not get interrupted I would keep going. The agriculture inspector, I just want to say that I agree with you. The agriculture inspector does not know whether that plant is being grown for research or not and I have said I think he has done an outstanding job with very little guidance and high level support. These issues that are brought up here are well above this individual and in many ways way above the role you have previously fulfilled and you just came into the middle of this, correct? But the agriculture inspector...I am sorry. I lost track of my...I am going to make a request of this Council for the umpteenth time. When I take the floor I have thought things through, I lose track and I have to regroup. If you want to interrupt me do it with a point of order according to our rules please because it impacts me significantly as an individual because I had three or four (3 or 4) things I wanted to dialogue with you and the interruptions keep me from remembering what they all are right now and I will remember again in ten (10) minutes.

Ms. Yukimura: Thank you. I just want to say that point of order...

Mr. Rapozo: Madame Chair. I just have a question on process.

Ms. Yukimura: Yes, go ahead.

Mr. Rapozo: If you want to be allowed to have discussion and it is your call, you are the Chair, but this period is for questions and I sit here and I listen to the discussion going back and forth. If that is what you are going to allow than that is fine as long as it is allowed for everybody because I do have quite a bit of discussion but I have been waiting for that opportunity. To make a

statement and then say "is that correct" is not a question and I am going to ask you, Madame Chair that you just let us know. If that is what the rule is going to be than I will accept it.

Ms. Yukimura: Okay, thank you for the point. I will allow discussion as related to the Bill but I would like to ask for discretion by every Councilmember to not use it as a way of making argumentation. I will interrupt the speaker if I think it is argumentation. I believe that is the role of the Chair. A point of order is raised by Members not by the Chair. The Chair can just assert a point as a Chair. That is my understanding of the rules of parliamentary procedure. So with that I would like to continue. I believe Councilmember Hooser, you have a question.

Mr. Hooser: In looking at the Ordinance itself...when I get calls from people a lot of the times they are wondering about dedication on large parcels that look like they are vacant but there are a few cattle off in the corner somewhere and it says in the Ordinance now "for parcels involving the ranching of livestock the entire dedicated area shall have establish fences and livestock present at the time of filing a petition to dedicate." So if there is a four thousand (4,000) acre parcel this looks like the four thousand (4,000) acres have to be fenced and have cattle on the four thousand (4,000) acres, is that fair?

Mr. Hunt: I believe that is the case unless it deals with over one hundred (100) acres. I know that there are different rules that deal with parcels over one hundred (100) acres which fifty percent (50%) of it needs to be meeting the standards as of the time of the dedication. I cannot speak on the ranching off hand.

Mr. Hooser: Right. Since I have it here...if it is over one hundred (100) acres and it is under cultivation, over fifty percent (50%) has to be...

Mr. Hunt: Just under cultivation.

Mr. Hooser: ...at the time of dedication for cultivation. For livestock the entire area has to have livestock present and entire area fenced and so my question is what is the process or how do we know? Is this occurring? When someone petitions is it inspected? Do they go out and look to make sure that there are cattle on the entire property?

Mr. Hunt: There is one (1) agriculture inspector for the County and I just received notice that there are actually nineteen hundred and eighty-five (1,985) parcels that are actually in the dedication program. So to say that he visits them annually would be a false statement. Does he do a good job on the intake when they come in? Absolutely. So at the time of petition he does his findings of fact and he provides a letter and that ultimately ends up as a

recordation on the deed as a lien, if you will, in case there is a breach. Compliance and monitoring, that is a challenge not only for agriculture but for a bunch of other areas of real property as well.

Mr. Hooser: And dedication periods of ten (10) years or twenty (20) years, is that correct?

Mr. Hunt: Correct.

Mr. Hooser: And so whether or not they are inspected fifteen (15) years down the road, we are not sure because we have one (1) person?

Mr. Hunt: Yes. I could not tell you. For the most part it is complaint driven. If we have complaints we address those and I know we address them at the time of dedication to make sure that the requirements of the dedication are in place at that time.

Mr. Hooser: And I cannot remember...I should be able to remember because we just finished the budget but did anyone ask for additional personnel to support the agriculture one (1) person?

Mr. Hunt: No we did not ask for additional personnel.

Mr. Hooser: Okay because...thank you.

Ms. Yukimura: Thank you. I have some questions and then we will go to Mr. Bynum. This study that you mentioned which developed agriculture values...you said the agriculture based on a study that was based on caring capacity of the land and you explained the different items that were in the formula. When was this study done?

Mr. Hunt: I mentioned earlier I do not know. There was one (1) done...there use to be even lower...I think we doubled the rates from one thousand (1,000) to two thousand (2,000) for diversified agriculture some time ago. I would say probably in the mid 90s. I am just going off of memory here. But I believe it was the College of Tropical Agriculture Research that actually provided those figures to help.

Ms. Yukimura: It would be interesting to apply this study to the biotech crops. Just based on caring capacity, which is at this point the standard of measurement apparently of agriculture value so it would not be treating them any differently than any other agriculture and it makes me wonder also whether we should mandate that a study be done every so many years so that we have current evaluations.

Mr. Hunt: I guess if you are down that path one (1) of the concerns that I have is that we are now trying to establish a rate for each type of use or crop and that could actually...

Ms. Yukimura: That was my next question.

Mr. Hunt: But that could dictate if you say we determined that mangos is the most profitable and the highest rate that people growing mangos and everyone grows mangos and it floods the market and then it does the opposite.

Ms. Yukimura: I would not worry about that. There are a lot more factors than agriculture valuation of crops.

Mr. Hunt: I think keeping it simple into diversified and pasture is advisable only because unless you are willing to really start ramping up our staffing and research and support funding to develop this...you know.

Ms. Yukimura: But you may find by a survey or a study that there is actually three categories, diversified crops, pasture, and biotech or research.

Mr. Hunt: Well Adam Killerman was up here earlier and I do not know...he does research on rich but I do not know if he would agree that there is necessarily a higher rate for research.

Ms. Yukimura: Well we do not need any agreement. We need a study perhaps that would tell us what we are talking about. We do not even know what we are talking about right now, right? Right now we only have two (2) categories, pasture and diversified crops.

Mr. Hunt: With four (4) different rates because we have the ten (10) year and the twenty (20) year for each.

Mr. Bynum: Tree farms?

Mr. Hunt: Tree farms actually, I am sorry tree farms, that is actually an exemption.

Mr. Bynum: Exempt.

Mr. Hunt: Yes. There is an exemption that applies. They get market value and then they get the same exemption knocking off the value for a period up to twenty (20) years.

Ms. Yukimura: Now you have to explain to me and this is a question, how the interface of agriculture dedication and valuation operates? Would you please explain that?

Mr. Hunt: The interface, once it is dedicated it does not interface. It actually is a circuit breaker, if you will and pulls it...bad terminology because we use circuit breaker elsewhere but it basically does not keep it on market value, puts it on a agriculture value. So once you get into a dedication that is approved it is now determining the agriculture value for assessment purposes not the market value because you could have an ocean front small five (5) acre farm that may have a two million dollar (\$2,000,000) market value and inland you could have the same size two (2) acre that has a two hundred thousand dollar (\$200,000) value but they both for agriculture purposes have the same value because the soils are the same, the capacity is the same, what they can produce agriculture does not change whether it is ocean front or interior so again the dedication process removes market value and puts it on a dedicated agriculture value.

Ms. Yukimura: It would be interesting to do a market value within agriculture, the category of agriculture and not according to other development possibilities.

Mr. Hunt: There were some true, what I call market value agriculture sales initially at least in Moloa'a when they certified property regime (CPR) properties into units that were more than the allowable density but that kind of morphed once the farm worker housing. Then people started looking at density and values started going back up again but for a while those were true...they were purchased again on a price per acre based on what they thought they could farm with.

Ms. Yukimura: Because they were not allowed any density.

Mr. Hunt: Correct.

Ms. Yukimura: Okay, well this is all very interesting and I think relevant to what we are trying to do here. I think that is all I have at this point. Councilmember Bynum.

Mr. Bynum: Thank you, Councilmember Yukimura because it is right here agriculture value that is what I wanted to talk about, agriculture value. You have described how there is basically two (2) categories with four (4) rates. How do we determine the agriculture value of research where none of those things apply? I am looking at the license agreement that the landowner has with the company and it says "minimum annual license fees will be payable. For the first year the term the minimum annual allows this fee in the amount of" and it is redacted. And a quarterly fee will be the minimum license fee will be paid...then

there is a section called research fee. While the primary use of license premises are for the production of parent seed corn as fully set forth in this other section licensee may also use a portion of the license premise for seed research crops including the operation for crops for research nurseries. If the licensee uses a portion of license premise for seed research crops in contrast to parent seed corn at any time during the license share a licensee will pay an additional annual fee in the amount of redacted with respect with such acreage use for seed crop research and round it to the nearest...shall be (inaudible). Now do we know which pieces are research? Do we know what the seed companies are paying and does the law not require that these be disclosed to us?

Mr. Hunt: The lease amounts...I am answering the question. The lease amounts are not a requirement of the dedication. The landowner who dedicates can decide to sublet his property or create how many leases as long as he is meeting what he is stating as his business plan or his agriculture plan but it is not a requirement to get the leases.

Mr. Bynum: I will follow-up that with the County Attorney. My question is about the agriculture value part.

Mr. Hunt: Okay.

Mr. Bynum: This is different than anything else you described that we have researched in the past. Do you agree with that?

Mr. Hunt: Again, I do not get a lot of the leases so I cannot tell you. We do not typically monitor what the market, ongoing market rents that landowners are charging. They may change it based on availability to water, the areas, all of that...we do not get that information and what we do we are doing a soil rate value, if you will. We are not doing a business plan value, or what someone is willing to pay for the property.

Mr. Bynum: Let me just say there has never been a research or study. This is not the same use of the land as diversified agriculture or ranching where we have set these values. The attorneys picked up on this right away and said the only way we can value this is on the lease payments because there is no product being produced, right. So the rules that you just described just do not apply and defacto do not apply and so anyway how do we determine the agriculture value and the parcel where no products are being produced or sold? Of course you cannot answer that because this is a policy level that is above the real property tax people and that is why the County Attorneys for whatever reason, failure to provide assistance and coordination and answers the questions is very troubling because you are sitting up here talking about agriculture value and there is a fundamental disconnect that just...because the world changed.

Mr. Hunt: Councilmember Bynum, we do not look at every...if we do get leases we do not ask if this guy is leasing for one hundred dollars (\$100) an acre. This guy is leasing for four hundred dollars (\$400) an acre. They are identical properties. Maybe he was a friend. He got a better deal. We are going to give him a lower value. We do not do that. We look at the total soil value of the property on an aggregate basis. What it would go island wide not individual. We do not do an individual lease analysis for each property. Frankly, we do not get all of the leases.

Mr. Bynum: And you should and so this agriculture value question, I am just going to ask that our staff and the County Attorneys who are listening help advise you about it because this is a fundamental problem because all of that you described, the reports we have done in the past cannot by their nature apply to this particular use. The fundamental problem here is that these petitions were received in 2013 and the changes happened in 2010 or 2008. That is the fundamental problem here but it is layered. This agriculture value question is total in play right here because of what we have learned that there is no product. This was based before on like you said all of those factors they do not apply here and that is like a whole other level. Thank you.

Ms. Yukimura: Thank you. Councilmember Kagawa.

Mr. Kagawa: Steve, I am sure we are not the only one in the State that taxes the agriculture property in this manner so what other County are we following or we work closely with in line?

Mr. Hunt: Everyone seems to have their own program.

Mr. Kagawa: It is all different?

Mr. Hunt: I looked a 'Oahu's because I have a copy of it. For one (1) year agriculture dedication, they actually assess the property at three percent (3%) of its market value. For a five (5) year, I think it goes to a two percent (2%), and for a ten (10) year, they do a one percent (1%) of market value so it is much more favorable than what we are actually doing here.

Mr. Kagawa: How much percent of ours is market?

Mr. Hunt: Well it varies because we do it on a unified basis. It is a price per acre regardless of what the market value so on an oceanfront one the discount is much higher and on an interior *mauka* one the discount is much lower. I believe the Cumberland piece, the Grove Farm piece that sold for between five thousand dollars (\$5,000) and six thousand dollars (\$6,000) an acre. Twenty-seven hundred (2,700) acres for sixteen million dollars (\$16,000,000) that is the market value of agriculture in true market value, if you will, highest and best

use, whatever. They bought it. So the difference between a diversified agriculture of two thousand dollars (2,000) and five or six thousand dollars (\$5,000 or \$6,000) is not as dramatic as it would be if you have urban lands that are dedicated that may have a ninety-one or ninety-two thousand (91,000 or 92,000) per acre assessment at market versus a two thousand (2,000) diversified. The discounts vary but the consistency is what is the agriculture use? Is it diversified or pasture? What can that land produce? And that is how we value all agriculture lands.

Mr. Kagawa:

What about Maui County and Big Island?

Mr. Hunt: They have their own programs. I have not specifically looked into theirs because I do not have copies of them but I can do that to see what...Big Island who is certainly heavily into ranching I would suspect probably have some very favorable terms as well but I would have to research that.

Mr. Kagawa:
line.

Okay. I thought we were all somewhat in

Mr. Hunt: We somewhat started all in line when we were all under the State but everyone has kind of morphed and gone their own direction specifically with agriculture depending on its importance to the island.

Mr. Kagawa:

Okay.

Ms. Yukimura: Thank you. I have a follow-up question to that. Actually it might be a follow-up to Councilmember Bynum. Do we take lease rents into account in determining market value for non agriculture land?

Mr. Hunt:

For non-agriculture land?

Ms. Yukimura:

Yes.

Mr. Hunt:

No.

Ms. Yukimura:

No, we do not?

Mr. Hunt:

No.

Ms. Yukimura:
seller?

Okay. It is just the willing buyer, willing

Mr. Hunt: It is highest and best use as fee simple. The lease creates a leasehold interest and we would be valuing something else than fee simple. We have that with condominiums that are in leaseholds such as Kiahuna where they are not buying the entire bundle of rights. They do not own the land.

They have to pay lease rent on the land so I guess we have looked at leases in terms of trying to convert that to fee but we have also mirrored that with actual multifamily sales to say what is the price per unit to get that parody but it is taken into consideration but really not given a lot of weight. Primarily we are based on market sales which is the comps, the sales that drive valuation.

Ms. Yukimura: So the one (1) place that you do look at lease rents is in condo leaseholds even though it is not the primary...

Mr. Hunt: It is not the primary source but it is certainly in absences of any sales you can kind of mirror where if you had sales and the leases renegotiated during the same timeframe you can kind of mirror those and if the lease rents go up and you do not have any sales you can kind of obstaculate to see where that fee simple value might be for that land.

Ms. Yukimura: Okay. Thank you. Any other questions of Mr. Hunt? Councilmember Hooser.

Mr. Hooser: I think this is my last one since you are here and you have the Ordinance in front of us it is a great opportunity to...the Ordinance says "factors that shall be considered to determine whether an owner intends to obtain a monetary profit from the activities." I think this is existing...this is existing law.

Mr. Hunt: It is not the Ordinance we are discussing?
The Bill?

Mr. Hooser: It is the Ordinance we are discussing.

Mr. Hunt: The Bill?

Mr. Hooser: Well it is not...it is this here. It is not new material, I believe. It is existing law on the Ordinance.

Mr. Hunt: Okay. This would be page 4? Okay, got it.

Ms. Yukimura: Page 4 of the Ordinance.

Mr. Hooser: I have it at the top of page 4. Right and this is the criteria to determine whether it qualifies for agriculture dedication, part of the criteria, right? It says factors that shall be considered and some of us appreciate the word shall and may. This says, "factors that shall be considered include but are not limited to." So to me this says these factors have to be considered. Which says, "evidence that they have water department agriculture rates, filed copies from the immediate preceding year of the IRS Schedule "F" forms,

showing profit/loss from farming, copies of fuel tax, and then sales receipts generated from illicit activities, etc.," so there is a lot of debate about whether...

Mr. Hunt: This is language that I inserted by the way. This is from the original 741, 742 and in the context this was information that we wanted to be able to extract from the absence for physical evidence. When you drive up to the property, for the ease of the agriculture inspector when you drive up to a property, you do not see any evidence how can we verify. These are things we ask for to prove that they are doing it not to say on the application you need this.

Mr. Hooser: I understand previously you talked about this and I understand that what you believe was the intent and the context when the law was passed. I am just looking at the language that exists at this moment. The language that exists at this moment says, "these factors shall be considered" and so my question is, do you request this information from people who request agriculture dedication?

Mr. Hunt: No.

Mr. Hooser: Even though the Ordinance says these factors shall be considered you do not ask them for this information?

Mr. Hunt: We ask for the information in the absence of physical evidence. It is not upon application.

Mr. Hooser: With all due respect I am just reading the Ordinance. The Ordinance says, "factors that shall be considered include but are not limited to." Which says to me that the County must consider these items and we are not doing this you are saying?

Mr. Hunt: It is consider the items to determine whether there is a monetary profit. Not whether they are doing agriculture.

Mr. Hooser: But to qualify for an agriculture dedication they have to intend to obtain a monetary profit and to prove that this is that?

Mr. Hunt: Yes and just so you are aware too Schedule "F" which is the Farm Income Statement, they are not parcel specific. You could have twenty (20) properties and file one (1) Schedule "F" for all twenty (20) properties and nineteen (19) of them, you are not farming on so we cannot tie the property to a Schedule "F".

Mr. Hooser: This list a number of items and my question is, is the County requesting evidence of these items from people who request agriculture dedication in the answer is no?

Mr. Hunt: Well I would be putting words in Damion Ventura's mouth because I do not process these. He would have to speak to that directly but having written the words in the intent which they were written and going back to the time that the focus on was gentlemen farming these were factors that our Committee, Roy Oyama and the group that was involved, put into the Ordinance to basically have proof and teeth that those that are gentlemen farmers need to show that they are doing these things. That was the context with this descript.

Mr. Hooser: And I do not understand why we would not ask everybody to do this not just gentlemen farmers. The language says "factors that shall be considered" and we do not have to belabor the topic so maybe I will ask an opinion or something from the County Attorney's Office. But it is clear to me that it says these factors shall be considered including but not limited to. Regardless of what...and I respect your stroke of knowledge but what we are looking at are the words on the paper today and someone will look at them ten (10) years from now when we are gone and it is pretty clear to me and if that is not being done then that is an issue but thank you. Thank you, Chair.

Ms. Yukimura: Other questions? Okay before we go to Mr. Bynum we do want to have a question sent to Finance asking if we do so we can get an official answer. If we do ask for this information. Okay.

Mr. Bynum: I will wait. I am done.

Ms. Yukimura: Any other questions? If not, thank you very much, Steve. Alright I think we are ready to come back to our meeting.

The meeting was called back to order, and proceeded as follows:

Ms. Yukimura: Chair wants to observe that there is a lot of work to be done on this Bill. So I assume we will be deferring it but before I accept a motion to defer, let us have discussion. Councilmember Bynum, even though you are not a Committee Member, as the introducer of the Bill, why do you not start?

Mr. Bynum: I appreciate that. The part of the law that is in the law now, this is not new proposal that Mr. Hooser just read along with many other sections of a complex law and the administrative rules would certainly lead one to believe that the intention of the law was that you are producing a monetary profit from the thing that is there. These are the three (3) files that I have been dying to get all the documents and I found out today that I still do not have all of them and if I had time I could go through them but basically previous...for many years the landowners submitted all of those things, GE taxes, this is what products

are being grown, this is the guy, and then they are not there anymore. They are just not there anymore. I think Steve is a tremendous asset to our County and he and I have worked together really well in restructuring Finance. I helped managed those proposals in Finance that came from the Mayor and I really appreciate his work but Councilmember Hooser is right. The law is what the words that are on the table and many landowners followed it to the tee and they submitted all of these documents but Steve is also correct that in practice they have not been asking for these things. So the nature of agriculture changed under our feet at a high level, the agriculture valuation does not make sense anymore but that was above our agriculture inspector's level. It was above our tax people's level. It was at the Finance Director's level way prior to the time Steve Hunt was in that position. In terms of this Bill, I have been accused of waiting till the last minute to slip it in. I hope that everybody has seen today that I have been waiting to get assistance and help and information and I put it on...now the fact that if this Bill does not pass out of Committee today, these tax changes will not affect which fiscal year, Steve?

Mr. Hunt:

2016

Mr. Bynum: 2016. So if this does not pass out of Committee today and it is not going to...it is not going to affect fiscal year 2016. It will not go into effect till fiscal year 2017 because these things take...tax bills take way more lead time then other bills. Now we are up against that wall. Clearly the Bill needs more work but I am going to tell you the sacrifices that we defer today, we can continue to work on it but it is not going to take affect for a couple of years because of the lead time. A couple of more years we are going to lose two hundred fifty thousand dollars (\$250,000) on this parcel which I believe is highly inappropriate. These documents do not answer the questions that I am posing and in fairness to Mr. Hunt, he came into the floor while I was doing all of this research and he has been great about responding appropriately and cautiously as he should but this is something now that...so this Bill I am reluctantly and sadly going to agree that we need to defer it to give time to address all of these issues. Landowners have asked really good questions that we need to clarify but there all clarify able, they are all manageable and we have started that process today. Unfortunately this Bill will not affect two (2) tax years but that does not mean that there are not other elements of it that we can initiate sooner particularly the reporting. Like I said, I would love to show you these parcels and show you the concerns and I will ask for a future posting to do that because that is not related to the Bill directly but this agriculture value question and all of these other questions about what the law currently says and why we do not have those documents and why petitions are backdated. I mean came in 2013 for actions that took place in 2008 and 2009. Those question all need to be answered. I have faith in our Mayor to fulfill his responsibility based on this letter and to give us an action plan very soon. Thank you.

Ms. Yukimura:
Councilmember Kagawa.

Thank you. Other comments?

Mr. Kagawa: Thank you. I am not ready to support this Bill. As I stated as I began my questioning. My question of the maker as to the purpose of the Bill and I stated that the County Attorney's opinion was important for me to make sure that if a Bill like this passes that we will not have to go through another lawsuit and instead try and work on the Bill further so we can avoid it. We all know as we had today on the agenda, we have much lawsuits and our County cannot afford it right now and if we can avoid it we should. I have an uncle who farms down in Kipu. He does flowers, he does practically everything. It is very hard work and like Mr. Dyer said I do not think he really makes money but it is his life. I think he is a successful farmer not in terms of money but he gave up...he use to tuna fish with a boat and everything and he does not even go anymore but his heart and soul is in farming. He has raised taro, grows flowers and he struggles with diseases, with wild pigs and it is just a tough, tough job to make a profit and to me he is a success because he keeps doing it even though he is not really making money. I hope if we do change our rates a little bit or a lot that people like my uncle down there who is really working hard at farming...somehow at the end gets a better break than somebody who own agriculture and is not really trying and I think that is one (1) way for me that we would make it more fair and would actually be promoting the farmers who are actually committed to it. I am not saying it is easy. I am sure a lot of people tried farming with all of their heart and soul but it is just tough. I raised some vegetables myself and right in Waimea Valley by Mr. Kubo there and it is not easy. You go on a trip, you neglect it, things die, start all over. It is tough. It is hard to make money but you can make money. We have some good farmers out there and of course Kaua'i people love fresh produce. I am all for growing more food, I have always said that. Growing more food, local...look at our farmer's markets it is just packed. If you do not reach there early enough all of the good vendors are gone. The local people know who grows the good stuff and they get rewarded with the good vegetables and fruits and whatever but we just need to make sure that when we put bills before this body that the County Attorney...I do not know how we are going to force them to get an opinion or get recommendation as to how to make things better but we need to push them to get that process through first and I think that will save a lot of grief, getting people all worked and everything about a bill and perhaps it may be premature. With that thank you, Chair.

Ms. Yukimura:

Other comments. Councilmember Rapozo.

Mr. Rapozo:
go.

I think Mr. Hooser wants to go last so I will

Mr. Hooser:

She is going last.

Mr. Rapozo:

Well we have a caption break coming up.

Ms. Yukimura:

Go ahead.

Mr. Rapozo: Thank you. You hear other discussions today and it is almost déjà vu about when we had the discussions about the Transient Vacation Rentals (TVRs). It is the same thing. The issue is not the tax rate. The issue is not the tax rates of agriculture. It is the dedication process. It is how we process dedications and are we doing it properly? That is the issue. It is not the rate. This Bill does nothing for the dedication process. What it does it targets an industry. That is the truth. People may deny it but...and that is why I think they took out horticulture. I think the attorney took out horticulture so they can say "no we are not targeting the seed companies. Look we are taking out horticulture." Who would take out horticulture as an agricultural use? Really, I do not know who suggested that in the County Attorney's Office but that is ridiculous. Horticulture is not a agriculture use? I just think that was the token give away like "yes we are not just targeting seed companies, look we took out horticulture." It is ridiculous. October 23, Mr. Hooser you kind of touched on, October 23 when we did the resolution for a 3.17 investigation on the TVR abuses. It is the same thing. This Council did not pass it. Council said no we do not want know what is going on. We want to give them an opportunity to clean up the mess. That is what the solution is. It is not the...it is the process. It is our dedication process. It is how we do our agriculture dedications. Are we fulfilling the requirements of the statute? If not then we need to. Mr. Barca mentioned the fiscal hold that we are in and I am glad you recognize that because we are deep but the solution is not to continuously raise taxes and find new areas to go raise taxes and then once we are done with the biotech then where are we going to next? Are we going to go somewhere else? It is a balance of cutting expenses and revenue generation but we cannot just continue to look for ways to raise taxes. That is not the solution because at the end of the day the consumer will pay if we keep raising taxes.

A few months ago I had a sore knee. My knee kept bothering me and people told me it was age, arthritis so I decided to go to the doctor and the first thing the doctor, whatever they call them now, doctor practitioner, or whatever they are called, not a real doctor but somebody that apparently went enough school to pretend to be a doctor said just lift up your pants, we will give you a cortisone shot. That will fix the pain right away. I am not taking no stinking cortisone. I do not like needles and I do not need to fix it temporarily. I do not need the bandage approach. I need to find out what is wrong and you know what? She sent me to physical therapy and the physical therapist worked with me for a while and fixed it because the problem was not just the pain. The problem was some of the muscles and ligaments in there needed to be strengthened and that is what physical therapy did. The reason I bring that up is because it is so easy to sit here and pass a bill. Just pass a bill. It will fix it. Temporarily it will fix it. It does nothing to the root problem that we are experiencing on this island. The root problem is not the fact

that the seed companies are not paying enough taxes. That is not what I heard. If you read the discussion and the testimony we are not concerned about them paying more taxes. They are concerned about pesticide use. They are concerned about the impacts to the communities. Things that laws that are already in place that we just do not enforce. That is the root problem that we need to fix. Passing this bill does absolutely nothing for pesticide use. And we do not need a study, Councilmember Yukimura. I disagree we need a study. We do not need another study. What we have to do is we have to take a look at the ordinances that are out there and we have to find out why our administration is not able to enforce it. That is how you do that. You do it either through an audit, you do it through a 3.17 investigation, which again, when we talk about land use and whether it is vacation rentals or farmers or whatever it is, how they can circumvent the law we have to figure out how that is happening and fix it. That is how you fix the problem not just continuously passing laws and laws and laws that will not get enforced anyway. So to sit here and pretend like this is going to solve the problem it is not. I am not going to support the Bill. First of all, I do not think that is how we should do things. I do not think we go after an industry and charge them more. But I tell you what I am not satisfied with how we are processing the laws. I think Mr. Dyer, you bring a very refreshing perspective and I respect what you said. You have done it. I have never farmed a day in my life except a mango tree that I am trying to grow now. I am having problems with that. I cannot sit here and tell you what is the right thing to do for farmers but I know philosophically I have a difficult time just tagging more people for more taxes just because we cannot run this County efficiently. Look at the records. When you look at the budget, look at who voted for tax cuts, I mean expenditures and look who supported tax increases. We cannot continue to do that. The well is dry. Not just the County's well but the taxpayer's well as well and this is not the answer. This Bill is not the answer in my opinion. We want to go find out the root of the problem well I can tell you just from today's discussion, Steve, and I appreciate you being here, one (1) agriculture inspector for thousands of parcels. I mean I do not care how good that guy is. It is just like having one (1) guy on offensive line, it will not work. Quarterback is going to get sacked every single play. So let us figure out what our priorities are here on the County Council. Mr...I forgot your name back there...

Mr. Frank:

Elijah.

Mr. Rapozo:

Yes, the fireman, right? You said it best. What is the Council's vision for agriculture going forward? That is what we need to decide and you do that by...the Ordinance as it is written right now without any of the amendments is fine. It is fine but are we doing the exemptions properly? Are we getting to the exemptions in a...Mr. Hooser brought up a very good point and if you read page 4 those factors shall be considered and I understand what the intent may have been, Steve, and maybe that is where we have to fix regarding the Schedule "F" because if we are collecting a Schedule "F" that is meaningless then we should not collect the Schedule "F". Why waste your employee's time looking at

a schedule that is not relevant? But if you look at the very next paragraph it talks about the physical evidence which you talked about but it says shall also be used so as I read this Bill, I have to agree with Mr. Hooser that it is both. That we have to look at all of the documents, we have to look at the tax returns, we have to look at the fuel tax... all of that has to be looked at in addition...if you are applying for a dedication for grazing livestock so forth, then you have to look at those additional things. I think it is something that we have to really encompass the entire process, work with the administration, figure out what it is you need, and if it is the County's direction to go out and actively enforce the dedications and exemptions then we have to be prepared to fund it. But to just pass a Bill to raise taxes on one (1) and I am just going to disagree with whoever says that is not farming out there. That is agriculture. It is a different type of agriculture. Whether you agree with it or not it is still agriculture and I do not see how you separate agriculture from agriculture. I just do not and somebody talked about the hotel. I think Mr. Hooser brought up the hotel scenario, analogy. The hotel is not built on agriculture land. The hotel is built on a resort parcel. It is zoned, you have the resort so that is a whole different story. If someone tried to build a hotel on agriculture land I think we would have some issues, well, I would. But that is not the case here so anyway thank you Councilmember.

Ms. Yukimura:

Thank you. Mr. Hooser.

Mr. Hooser: Yes, I find myself agreeing with just about...a little bit about what every spoken here and I think it has been a really, really actually good discussion overall. It has taken some time but I am glad we took the time to do that. To me it is about equity in our tax structure and it is about implementing the law fairly and across the board. As Councilmember Kagawa has said that I feel for the small farmers and small businesses out there busting there *okole* trying to make ends meet and pay their tax bill every year and struggling and then I see these multimillion dollar companies, two hundred fifty million dollars (\$250,000,000), five (5) companies and they are paying four thousand dollars (\$4,000) a year on four thousand (4,000) acres which is less than many small businesses in Kapa'a, Kōloa and Līhue are paying that barely make it and these are multimillion dollar companies paying next to nothing and yes, it is just not being enforced. We do need additional support and I believe that it would pay for itself if the tax office had additional staff to do the work. We have a perfect history of this as part of the 2491 process as I looked into the different parcels of land, discovered that three (3) of these companies had not paid taxes, had been charged for taxes nor paid them in many years, sometimes back to 2006 the County is only allowed to go back two (2) years and so we were able to collect at that point one hundred thirty-one thousand dollars (\$131,000) which would pay for a full time person and that is just me accidentally stumbling upon three (3) of these large companies who had not been billed for and had not paid their taxes and so there is clear evidence just without even trying of inequities in our tax structure meanwhile little mom and pops are struggling to pay their bills and we for whatever reason are not enforcing

existing laws, not doing the research and so we need equity and what Councilmember Rapozo said I think is a really clear and obvious path. We need to either do an investigation or do an audit to determine what is going on. Why we have these missing elements. Why some of these documents apparently are dated out of sequence. There are a whole number of questions and so I would support that pathway that Mr. Rapozo laid out in terms of either doing an audit or doing an investigation to find out. There are millions of dollars potential, I mean millions without exaggeration of potential income that the County is losing out on, meanwhile the rest of us are struggling on a regular basis to make ends meet. I think it is really clear, I want to emphasize that this Bill, it is going to be deferred and it does need work, there is no question about that, but it does not in and of itself raise taxes.

What it does if it were passed is close loopholes and Mr. Barca I think nailed it and we need to close loopholes. Why are we letting large and I do not think it is targeting. I think if you look at where the violations are, where the questions are, it is about large landowners and large businesses. That is where the information has been coming out that the laws are not being enforced and so we need to close those loopholes and I thank Mr. Barca for bringing that up. Close those loopholes and then that additional income can perhaps be used to support some of these small farmers. As we sit here talking I am thinking how do we get more income from the large multimillion dollar companies and use that income to support agriculture, to support small farmers, to support water for farms, support pesticide monitoring and that is where the source of money should come from. We had cattlemen here a couple of weeks ago begging for land saying that was the answer, nothing else, land, availability of land and I believe if we enforced our agriculture dedication laws properly that more and more of that land would be freed up for real farmers like some of these ranchers that were here. It has been mentioned and sometimes in the media and letters to the editor that this is going to raise the cost of these landowners but virtually every lease is written to allow the landowner to pass on the cost of their taxes to the people leasing the property so that includes the State. The State is a big part of this also. They are leasing about five to six thousand (5,000 – 6,000) acres. I would like to support the deferral. I think we need to work on this issue a little bit more. Work on the definitions but I would also like this Council to consider moving forward the second path that Councilmember Rapozo suggested of really getting to the bottom of the questions about whether or not the lack of enforcement and implementation of the agriculture laws so that is enough for today. I want to close by really thanking Councilmember Bynum. This gentleman has done a tremendous amount of work. Months and months and months and without the information he needs to do the job properly but he has done a great amount of work, lots of research and I just want to commend him for putting it on the table today. Thank you.

Ms. Yukimura: Thank you. So I have a few words to add. I think this has been a rich discussion. We all learned a lot today and I want to thank everyone who participated, those who gave public testimony and raised some

of the questions about impacts, interpretation, etc., those who supported the main intent and those who have grave concerns. I want to thank Steve Hunt for being available, a really helpful resource person. I think what we have learned is that it is true as Councilmember Rapozo said that administration and enforcement of existing law is an issue at hand. I want to thank Councilmember Bynum who has as Councilmember Hooser just pointed out been inquiring about this matter for months or maybe for about a year to try to determine what is going on. Mr. Hunt has said that he will be responding to Mr. Bynum's letter and I think we need to give him the courtesy and the time to do that and we need to see what the answers are from the administration and if there are issues of enforcement of existing law that does not require any changes to the law then we need to ask the administration how that is going to be done. So we need to give that some time and if then it appears that there is no action on that level we can look at some of the powers that we have as a Council but I think we need to first wait for a response. I think what is also become evident to me is that we are dealing with a dated law and a law that has not had much attention and again thank you to Councilmember Bynum for focusing our attention on the law. I think it is worthwhile to defer this matter and pursue it in terms of seeing if a new category is useful or merited. I am not clear at all an agronomics category is the best way to go but I am intrigued by this idea that there are only two (2) categories under regulation right now, crop and pasture. Which to me biotech research does not fall under and I would love to understand better the processes of evaluation of agriculture land so that we can just learn more and see if there better ways to structure the law. As Councilmember Bynum has pointed out by deferring the matter we will not make the deadline for the next fiscal year or fiscal year 2016, which is next fiscal year. But I think we all recognize that we need to do work on this Bill, if we are not to have unintended consequences or hurt people, innocent people we have to really take the time to do a good law. I would like to support deferral and I want to say to the members of the Committee who might be wanting to vote against the Bill that if it is a two (2) two (2) tie it gets deferred anyway in Committee and just deferring it to the next Committee meeting is not going to be useful so I would like to suggest if we can that we do a deliberate deferral to a later date. I would like to suggest August 6, 2014 because I understand that staff will not be here on July 16, 2014 and defer to then, let us get answers to some of the questions that will set forth. I imagine that we will get a response from the administration as to Councilmember Bynum's letter by then so we will have more information and have a better sense of how to proceed from then. I hear there wants to be some input so let us get some input. Councilmember Kagawa first and then Councilmember Hooser.

Mr. Kagawa: I am not in support of the Bill so I would not like to deal with it in two (2) weeks. I think it is too short. I would be okay with going to August 6, 2014 because a two (2) two (2) tie would bring it back in two (2) weeks.

Ms. Yukimura: So we have to change the tape in five (5) minutes so let us see if we can finish this discussion. We heard from Councilmember Kagawa. Councilmember Hooser.

Mr. Hooser: I support deferring it, but to me, August 6, 2014 is too far away. Two (2) weeks maybe to soon is there some middle ground?

Ms. Yukimura: What is the rush if we cannot make the deadline?

Mr. Hooser: I am not prepared to accept the deadline. I think I would like to look at that closer. I think that is an internal deadline. That is not law. This is the tax office saying that we need this much time to put all of our ducks in a row and so it is an internal self imposed deadline by the tax office. It is not cast in stone. So I would like to be expeditious and...

Ms. Yukimura: Okay, Councilmember Bynum and then we will make a decision if we can.

Mr. Bynum: I think that I have demonstrated that I have been extremely patient. I understand and to me it is a huge loss and I agree with Councilmember Hooser on second thought. These deadlines that I am being told are kind of not "set in stone" kind of deadlines and so there is still a possibility we could still make this determination and it is fiscal year 2016 which is two (2) years off that we are going to miss. Steve can help me with this. I have never gotten the fiscal stuff. We are in 2014 – 2015 now. We will be in...may I ask Steve to just...

Ms. Yukimura: No I am going to call a five (5) minute recess so we can change the tape and you can talk offline and come back to talk. Let us do a caption break and a change tape, ten (10) minute recess.

There being no objections, the Committee recessed at 3:49 p.m.

The meeting was called back to order at 4:03 p.m., and proceeded as follows:

Ms. Yukimura: I would like to suspend the rules and have Mr. Hunt come and speak as to the deadlines.

There being no objections, the rules were suspended.

Ms. Yukimura: If you can state your name.

Mr. Hunt: Sure, Steve Hunt, Director of Finance for the record.

Ms. Yukimura: Thank you. So some Councilmembers feel there might be some leeway in the deadline for if this law were to be passed that would allow it to be applied to the fiscal year 2016 which is our next tax year. Can you respond?

Mr. Hunt: Sure. Let me elaborate. There are actually two (2) issues here. One has to deal with the application deadline for dedications. So any properties that are attempting to agriculture dedicate currently have to be done before July 1, 2014 for the next which would be effective for fiscal 2016, those are the dedications. If this Bill were to pass and the properties that were not intended to be dedicated since we are still processing between July first and October first it still could have an impact on fiscal 2016 because then some of these properties would not be allowed to be dedicated. In terms of the deadlines for the assessment or date of value is October first which means everything we process is before September 30, 2014 for the fiscal 2016 year. I would caution there may be some lead time because if you pass it right up close to that date there may be some issues with implementation in terms of how we are going to assess these creating a new tax rate/class if that happens. We do have some software lead time too to make sure any programming issues that need to be done can be accommodated. Ideally if something of this nature were to pass and regardless of the July first date we would like something probably towards the end of August at the latest to push this thing forward.

Ms. Yukimura: Any questions of Steve? Councilmember Hooser.

Mr. Hooser: Just to be clear then we could have until the end of August even though you prefer it as soon as possible and still impact 2016?

Mr. Hunt: Yes.

Mr. Hooser: Okay, thank you.

Ms. Yukimura: Councilmember Rapozo.

Mr. Rapozo: Steve, you said that the application deadline is July 1st.

Mr. Hunt: For dedications.

Mr. Rapozo: Right. So how would...they would not be able to. I mean if this is not done by July 1st, how could they apply?

Mr. Hunt: That is true but if it passes that means they cannot apply anyway, right? If the passage of this legislation precludes certain

properties from even applying for dedication or applying and being denied because they are ineligible for dedication then there could be that window but certainly if they are eligible for dedication and they apply by July first then we are sort of in that processing mode. I would be concerned, I guess if anything went out prior to the passage of this legislation in terms of acknowledgement or approval of those so we may have some discussions internally about how we hold some of those applications back until this Bill has been decided.

Mr. Rapozo: That would be a nightmare for your office though.

Mr. Hunt: Another one, yes.

Mr. Rapozo: Yes, I mean...okay. I just...why would we even do that, I do not know.

Mr. Hunt: I am just speaking to the logistics of it.

Mr. Rapozo: I know and that is my concern and it is unrealistic to try to push this through that quick. There are a lot of questions, I have a lot of questions, anyway and we do not know what the final outcome of the Bill would be. And just horticulture for example, I mean that could be one (1) that people could have applied in July and then find out they do not qualify. How does that work then. I mean how would you tell those guys "sorry" and I am just using that as an example because that could happen.

Mr. Hunt: That is correct.

Mr. Rapozo: How would you advise those people? Sorry or would you grandfather them in?

Mr. Hunt: Again, the assessment notice itself which includes the dedication and the letters, the response that go back we do have some time because it takes time for our inspector to actually go out and validate, do the findings of fact so there is some time in between the application and the actual approval of that but you are right in terms of segregating out this could be horticulture, may or may not be, this is clearly a seed company we do not thing it can be. There are going to be some challenges in sort of segregating work product until this Bill, the outcome is known.

Mr. Rapozo: Thank you.

Ms. Yukimura: Councilmember Hooser.

Mr. Hooser: I would just suggest that because there is an opportunity that we err on the side of having our discussion earlier rather than

later. It is up to the majority of the Council to decide whether or not to pass it. It is clear that we are looking at amendments but if we can amend it and a majority of the Council supports it and it is able to affect the 2016 budget then I think we should aim toward that if possible. We had a good discussion today so a two (2) week deferral or a little bit more possibly but I think we should move expeditiously to see if we could come to grips with this. I think it is an important issue.

Ms. Yukimura:

Thank you. Councilmember Bynum.

Mr. Bynum: Thank you for the opportunity as a non-Committee member. I understand the answer to this question now. The real drop dead deadline is October first but you need lead time to be reasonable too. I waited a long time to get this on the agenda. I asked for some of these documents and then petitions were given in July. I am asking for documents that were approved in November before the documents were given to me. The point I am trying to make is a lot of great discussion happened today. I had an amendment already prepared that I did not introduce today. Councilmember Hooser discussed them. I cannot think of any obstacle whatsoever to preclude us from going ahead as our normal process and revisiting this in two (2) weeks and if we discover that there are no amendments prepared or ready then it can be easily be deferred again but there is an opportunity to implement at least portions of this prior to fiscal 2016 which starts July 2015, correct?

Mr. Hunt:

Correct.

Mr. Bynum: I would encourage the Committee to do a straight up, normal deferral.

Ms. Yukimura: Okay. Any other questions of Steve? Okay if there are no more questions of Steve, thank you, Steve, and we are in a discussion phase then.

The meeting was called back to order, and proceeded as follows:

Mr. Kagawa: Well, I just want to actually call for the question and make a motion if it is okay.

Ms. Yukimura:

Alright.

Upon motion duly made by Councilmember Kagawa, seconded by Councilmember Rapozo, and carried by a vote of 3:1:1 (*Committee Chair Chock was excused*), Bill No. 2546 was deferred to August 20, 2014.

There being no further business, the meeting was adjourned at 4:11 p.m.

Respectfully submitted,



Lori L. Marugame
Council Services Assistant I

APPROVED at the Committee Meeting held on August 6, 2014:



MASON K. CHOCK, SR.
CHAIR, FED COMMITTEE